

1 UNITED STATES DISTRICT COURT  
 2 DISTRICT OF NEVADA  
 3 BEFORE THE HONORABLE CARLA BALDWIN CARRY, MAGISTRATE JUDGE  
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4 Robert A. Slovak, : No. 3:13-cv-569-MMD-CBC  
 5 :  
 6 Plaintiff, :  
 7 : November 28, 2018  
 8 -vs- :  
 9 :  
 10 :  
 11 :  
 12 Golf Course Villas : United States District Court  
 13 Homeowners Association, : 400 S. Virginia Street  
 14 : Reno, Nevada 89501  
 15 Defendant. :  
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10  
 11  
 12 **TRANSCRIPT OF  
 EVIDENTIARY HEARING**

13 A P P E A R A N C E S:

14 FOR THE PLAINTIFF: Tory Pankopf  
 15 Scott Johannessen  
 16 Attorneys at Law

17 FOR THE DEFENDANT: Jeffrey Willis  
 18 Kelly Dove  
 19 Attorneys at Law

20 Proceedings recorded by mechanical stenography produced by  
 21 computer-aided transcript

22  
 23 Reported by: KATHRYN M. FRENCH, RPR, CCR  
 24 NEVADA LICENSE NO. 392  
 25 CALIFORNIA LICENSE NO. 8536

08:37:49 1 Reno, Nevada, Wednesday, November 28, 2018, 9:00 a.m.

08:37:49 2 ---OoO---

08:37:49 3

09:03:32 4 THE CLERK: This is the date and time set for an  
09:03:32 5 evidentiary hearing in case number 3:13-civil-569-MMD-CBC,  
09:03:39 6 Robert Slovak versus Golf Course Villas Homeowners  
09:04:45 7 Association.

09:04:45 8 Present on behalf of plaintiff, Tory Pankopf and  
09:04:52 9 Scott Johannessen.

09:04:54 10 Present behalf of defendant, Kelly Dove and Jeffrey  
09:04:58 11 Willis.

09:04:59 12 THE COURT: Thank you.

09:04:59 13 Good morning everybody. Thank you for being here  
09:04:59 14 today.

09:05:01 15 We're here for an evidentiary hearing that I have  
09:05:10 16 set related to the Plaintiff's Motion For Sanctions. Before  
09:05:10 17 we get started, I'm going to go through some housekeeping  
09:05:11 18 issues as to, first off, what all I've reviewed in preparation  
09:05:14 19 for this but then, secondly, how we are going to proceed today  
09:05:18 20 and what the expectations will be.

09:05:18 21 In preparation for the hearing today, I should  
09:05:19 22 let everyone know I think I've read virtually every document  
09:05:23 23 that's been filed in this case; however, last night, I  
09:05:27 24 re-reviewed, in preparation of today's hearing, document  
09:05:30 25 number 218 and the exhibits attached thereto, which is the

09:05:33 1 Motions For Sanctions.

09:05:34 2 I also reviewed Document 222 and the exhibits  
09:05:38 3 thereto, which is the Wells Fargo response to the motion.

09:05:40 4 And finally, I reviewed docket number 225 and the  
09:05:44 5 exhibits attached to that, which are the plaintiff's reply  
09:05:47 6 brief.

09:05:47 7 I would note for the record that that particular  
09:05:50 8 document violates Local Rule 7-3b. That rule prohibits any  
09:05:54 9 reply brief being in extension of 12 pages long, unless it's a  
09:05:58 10 reply brief with respect to a motion for summary judgment.  
09:06:01 11 That document was 18 pages long. There has been no objection,  
09:06:05 12 however, by the defendant; therefore, the Court reviewed that  
09:06:08 13 and will continue to -- you know, it will not be stricken from  
09:06:11 14 the record and no other sanction will be imposed. However,  
09:06:14 15 I do want to make a note for the record that that was a  
09:06:17 16 violation of the Local Rule.

09:06:20 17 With respect to this hearing, I have set this for  
09:06:23 18 an evidentiary hearing and what I anticipate to do is simply  
09:06:26 19 to take evidence. I do not want to spend time with argument.  
09:06:30 20 I've read the briefs. I am very familiar with the brief.  
09:06:32 21 I've done extensive research on my own relative to the various  
09:06:36 22 issues, as well as reviewed the cases that have been cited  
09:06:39 23 by the parties. Therefore, what we will be doing today is  
09:06:41 24 simply taking evidence on behalf of both the plaintiff and the  
09:06:45 25 defendant.

09:06:45 1 I felt that given the record in this case and the  
09:06:48 2 history of the litigation, creating a good and extensive  
09:06:53 3 record was important in this particular matter.

09:06:56 4 So with that, what we will do is we will start with  
09:06:59 5 the plaintiff. Plaintiff will call his witnesses that he has  
09:07:02 6 and then we'll move to the defense. If we have time at the  
09:07:05 7 end, then I will have some opportunity for the parties to  
09:07:09 8 argue their positions but, primarily, I have a lot of  
09:07:12 9 questions that if we have time to get to, I would like the  
09:07:16 10 parties to be able to respond to in order to assist me in  
09:07:20 11 ruling on this particular motion.

09:07:22 12 We do have a court reporter here today and so,  
09:07:25 13 because of that, I would ask the parties to go ahead and  
09:07:28 14 come to the podium in order to do their exams and do their  
09:07:32 15 arguments. Normally, I usually have people sit at counsel  
09:07:37 16 table because we're doing it by recording. I'm not as  
09:07:40 17 concerned with that today. I would want to make sure that  
09:07:42 18 everybody knows not to interrupt each other, not to speak  
09:07:45 19 over each other. With the court reporter, it's very difficult  
09:07:48 20 to pick that up. And most importantly, if I am speaking I  
09:07:52 21 would ask that no one else speak for a number of different  
09:07:56 22 reasons. Obviously, if I'm saying something, it's probably  
09:07:59 23 because I have a question or I need something clarified. But  
09:08:01 24 secondly, again, we can't pick that up on the recording or on  
09:08:06 25 the transcript when we're speaking over one another.

09:08:07 1 For purposes of the hearing today, we will start,  
09:08:11 2 as soon as I'm finished giving this overview, and we will go  
09:08:14 3 until 10:30. We will take a brief recess for, probably, 10  
09:08:18 4 minutes. We will come back and we will go until noon. I  
09:08:21 5 anticipate if we need to go into the afternoon, we will start  
09:08:25 6 at 1:30, but we will break at 2:45 because I have criminal  
09:08:29 7 calendar at 3:00 p.m., and we will resume as soon as I am  
09:08:32 8 finished with criminal calendar, but we will conclude this  
09:08:35 9 hearing today at 5:00. It will not go into any other days.  
09:08:39 10 There will not be any continuances.

09:08:41 11 So I'm not going to put time limitations on the  
09:08:44 12 parties, but I want everybody to be cognizant of that. If I  
09:08:47 13 think that the plaintiff is taking too long with his witnesses  
09:08:50 14 and the defense is not going to be able to call theirs,  
09:08:52 15 then I will stop and we will move on to the defense's  
09:08:55 16 witnesses. So, I would hope that everybody uses their time  
09:08:58 17 wisely.

09:08:59 18 With that, I think I've covered everything to sort  
09:09:05 19 of setout the ground rules of what I would like to do today.  
09:09:09 20 And so with that, I will simply turn it over to the  
09:09:11 21 plaintiff's counsel.

09:09:12 22 Who will be leading the testimony today?

09:09:15 23 MR. JOHANNESSEN: Your Honor, Mr. Pankopf will.

09:09:19 24 I have a quick question, Your Honor?

09:09:20 25 THE COURT: Okay.

09:09:20 1 MR. JOHANNESSEN: There's a Rule 615 motion  
09:09:23 2 pending on sequestration and I would ask the Court any  
09:09:27 3 potential nonparty witnesses be excused from the courtroom  
09:09:30 4 while we're providing our testimony.

09:09:32 5 THE COURT: That would be granted.

09:09:33 6 MR. WILLIS: Your Honor, may I be heard?

09:09:35 7 THE COURT: Okay.

09:09:35 8 MR. WILLIS: The only nonparty witness in this  
09:09:37 9 courtroom is our expert and Rule 615 routinely does not apply  
09:09:42 10 to experts because the whole point of having an expert in a  
09:09:44 11 rebuttal capacity is to rebut what the presenting party's  
09:09:48 12 expert says.

09:09:49 13 THE COURT: Okay. Have you presented -- is  
09:09:52 14 there an expert report that's been drafted?

09:09:54 15 MR. WILLIS: There is not, Your Honor.

09:09:55 16 THE COURT: Okay. And I would agree with that,  
09:09:57 17 that normally we do allow experts to hear the testimony of  
09:10:00 18 expert witnesses of the opposing party. So in light of that,  
09:10:03 19 if there is no other witness her to testify -- that's present  
09:10:07 20 in the courtroom that's not an expert, they should be removed  
09:10:11 21 from the courtroom and not here for the hearing. But if  
09:10:15 22 there's any experts, they can remain, both on the plaintiff's  
09:10:18 23 and the defense side. I was unaware that the defendant had  
09:10:21 24 hired an expert, so this is news to me and I'm assuming news  
09:10:25 25 to plaintiff's counsel as well. I wish I would have had some

09:10:30 1 notice of that.

09:10:30 2 But with that in mind, is there anything else -- and  
09:10:33 3 I'm sorry, again, sir, what was your name?

09:10:36 4 MR. JOHANNESSEN: My name is Scott Johannessen.

09:10:38 5 THE COURT: Okay. Nice to meet you, sir.

09:10:41 6 MR. JOHANNESSEN: Nice to meet you.

09:10:42 7 THE COURT: And so will you be doing the hearing  
09:10:43 8 or is that Mr. Pankopf that will be doing that?

09:10:45 9 And I'm sorry, sir. I hope I'm pronouncing your  
09:10:48 10 name correctly.

09:10:49 11 MR. PANKOPF: You are.

09:10:50 12 THE COURT: Okay. Thank you.

09:10:51 13 MR. PANKOPF: And I'm going to do the voir dire  
09:10:53 14 of Dr. James Kelley.

09:10:55 15 THE COURT: Okay.

09:10:55 16 MR. PANKOPF: And Mr. Johannessen will be  
09:10:58 17 handling the other witnesses.

09:11:00 18 THE COURT: Okay. And how many witnesses did  
09:11:01 19 you intend to call today, sir?

09:11:03 20 MR. PANKOPF: Uh, at most, two.

09:11:05 21 THE COURT: Okay. And then is that Mr. --  
09:11:08 22 Dr. Kelly?

09:11:09 23 And who was your second witness?

09:11:11 24 MR. JOHANNESSEN: It will be what is,  
09:11:14 25 apparently, the custodian of records for Wells Fargo. I'm

09:11:17 1 not sure yet.

09:11:18 2 THE COURT: Okay.

09:11:18 3 MR. JOHANNESSEN: But, we were not provided much  
09:11:20 4 information. I'm not sure what her role is. I know her title  
09:11:23 5 and her name. That's it.

09:11:24 6 THE COURT: Were they provided a subpoena to be  
09:11:26 7 here today?

09:11:27 8 MR. JOHANNESSEN: No. They are producing her  
09:11:28 9 today.

09:11:29 10 THE COURT: Okay.

09:11:29 11 And on behalf of the defense -- and I'm sorry. Are  
09:11:32 12 you Mr. Gordon, is that correct?

09:11:33 13 MR. WILLIS: Yeah. I'm sorry. It's Jeff  
09:11:34 14 Willis.

09:11:34 15 THE COURT: Okay. Jeff Willis. Okay.

09:11:37 16 And please feel free to correct me if I say  
09:11:40 17 anybody's name wrong or I pronounce it incorrectly. I'm not  
09:11:43 18 trying to be rude.

09:11:43 19 MR. JOHANNESSEN: I've been living with the last  
09:11:45 20 name since high school, so --

09:11:47 21 THE COURT: Okay.

09:11:47 22 MR. WILLIS: Your Honor, we have a client  
09:11:48 23 representative in the courtroom who we may or may not call.  
09:11:51 24 We were not advised by plaintiff that they intended to call a  
09:11:54 25 Wells Fargo witness adversely.



09:11:56 1 THE COURT: Okay.

09:11:57 2 MR. WILLIS: And there was no subpoena.

09:11:59 3 THE COURT: Okay.

09:11:59 4 MR. JOHANNESSEN: And I believe, Your Honor, on  
09:12:01 5 November 6th, in our court -- our telephonic hearing, that's  
09:12:04 6 when -- the name had not been identified yet, but the Court  
09:12:07 7 allowed us to examine the witness at the -- whoever that might  
09:12:11 8 end up being -- at the hearing today.

09:12:12 9 THE COURT: That's correct.

09:12:13 10 MR. JOHANNESSEN: And also, Your Honor, if I  
09:12:15 11 may, there's also a motion to exclude the expert testimony,  
09:12:19 12 which goes to your second point that you raised earlier. I  
09:12:23 13 believe it's Jan Kelly. There are a lot of Kellys in the room  
09:12:29 14 right now.

09:12:29 15 But Jan Kelly, I'm not sure she's been designated as  
09:12:32 16 an expert. The only thing that I've received from Wells Fargo  
09:12:35 17 is a CV, curriculum vitae, and also the name, but nothing  
09:12:41 18 else. So on -- last night I was waiting for more from Wells  
09:12:44 19 Fargo, did not receive it. I kept asking for it. But I  
09:12:47 20 did file, on behalf of Mr. Slovak, a motion to exclude the  
09:12:51 21 testimony.

09:12:52 22 And, Your Honor, I was just as surprised as the  
09:12:54 23 Court is to have this late designation, whatever that might  
09:13:00 24 be. The only thing I know is Ms. Kelly was supposed to be at  
09:13:03 25 -- with them, quote, with them at the hearing. And also I

09:13:07 1 might add, Your Honor, this is -- and it's more thoroughly  
09:13:10 2 explained in the motion to exclude --

09:13:12 3 THE COURT: Okay. So I'm going to stop you  
09:13:14 4 right there, sir. I'm fairly confident at the hearing that I  
09:13:18 5 indicated I did not want any more filings made with respect to  
09:13:22 6 this motion. But with that being said, let me turn to the  
09:13:26 7 defense counsel at this point with respect to this expert.

09:13:29 8 Has this person reviewed these documents and will  
09:13:31 9 they be opining as to the authenticity of them beyond just  
09:13:38 10 simply the custodian of records now?

09:13:42 11 MR. WILLIS: Miss Kelly is a forensic document  
09:13:45 12 examiner who has examined the documents and is prepared  
09:13:48 13 to testify that the documents she reviewed are original  
09:13:52 14 documents. She is also prepared to testify regarding the  
09:13:55 15 anticipated testimony of Dr. Kelley, that these documents  
09:14:01 16 were signed using an inkjet printer. So, yes, we do have  
09:14:06 17 her available in the courtroom.

09:14:08 18 Now, Your Honor, we were --

09:14:09 19 THE COURT: So, but there, there has been no  
09:14:11 20 expert report that's been created by your expert and produced  
09:14:15 21 to the plaintiff at this point with respect to that expert?

09:14:18 22 MR. WILLIS: That is correct. That is correct,  
09:14:20 23 Your Honor.

09:14:20 24 THE COURT: Has she created any expert report  
09:14:24 25 that's been provided to you, sir?

09:14:26 1 MR. WILLIS: She has not created a report that  
09:14:28 2 has been provided to me or anybody else. We do have some  
09:14:31 3 PowerPoint slides, which I will mark as an exhibit and provide  
09:14:35 4 to counsel for plaintiff.

09:14:37 5 THE COURT: But those have not been provided in  
09:14:40 6 advance of today's hearing?

09:14:41 7 MR. WILLIS: No, Your Honor. In fact, they were  
09:14:43 8 created last night.

09:14:52 9 THE COURT: Okay. Here's the thing. If we're  
09:14:58 10 going to have a competing expert by the defense, I believe  
09:15:02 11 that the plaintiff has a right to see what those findings  
09:15:06 12 and those basis of her expert opinions would be prior to the  
09:15:10 13 hearing in order for them to be properly prepared. I was not  
09:15:15 14 under the impression that there was going to be an expert.  
09:15:18 15 And in fact, as I recall from our last hearing, Ms. Dove  
09:15:21 16 indicated that you had not intended to hire an expert witness.

09:15:26 17 MR. WILLIS: I don't -- I don't believe that we  
09:15:29 18 made that representation, Your Honor.

09:15:31 19 THE COURT: My understanding was that you had  
09:15:33 20 considered retaining an expert, but had not done so.

09:15:37 21 MR. WILLIS: That, I believe, was the statement  
09:15:38 22 that was made because at the time of the hearing we had not  
09:15:41 23 retained Ms. Kelly.

09:15:42 24 And frankly, Your Honor, we were viewing this  
09:15:45 25 hearing as in the nature of a Daubert hearing, where the issue

09:15:48 1 before the Court is the qualifications of Dr. Kelley to opine  
09:15:51 2 as an expert in the area of forensic document examination.  
09:15:55 3 We were actually hopeful that Ms. Kelly, Jan Kelly, would not  
09:15:59 4 be needed to testify because, after Dr. Kelley's testimony,  
09:16:02 5 we believe the Court should rightfully exclude any testimony  
09:16:06 6 offered as an expert of opinion by him under 702 and under  
09:16:11 7 Daubert.

09:16:12 8 THE COURT: And that is correct, that is one  
09:16:14 9 of the primary basis of this hearing today is to go through  
09:16:17 10 the Daubert analysis and to make a determination as to  
09:16:22 11 Mr. Kelley's -- or Dr. Kelley's qualifications because I do  
09:16:23 12 believe that this entire motion turns on the question of  
09:16:27 13 whether or not that expert opinion is something that is even  
09:16:30 14 admissible or should be considered by the Court. So, I don't  
09:16:33 15 disagree with that.

09:16:35 16 We're going to proceed today either way. And we'll  
09:16:37 17 take the testimony. And your objections can be made on the  
09:16:40 18 record. But, I'm not going to continue this or make anybody  
09:16:45 19 go home at this point with everybody that's come. And I  
09:16:47 20 believe, Mr. Johannessen, you've come from quite a distance to  
09:16:50 21 be here. I'm sure Dr. Kelley has as well. So, we'll go ahead  
09:16:54 22 and proceed.

09:16:54 23 But with that in mind, we'll move forward and we'll  
09:16:59 24 see where we're at, and then we'll just revisit what needs to  
09:17:02 25 happen as the hearing proceeds. So with that, I'm going to go

09:17:07 1 ahead and turnover to plaintiff's counsel and let's just get  
09:17:09 2 started at this point.

09:17:10 3 MR. WILLIS: Thank you, Your Honor.

09:17:12 4 MR. PANKOPF: Your Honor, we would like to call  
09:17:14 5 Dr. James Kelley.

09:17:32 6 THE COURT: Please, sir.

09:17:32 7 MR. WILLIS: Point of clarification, Your Honor.  
09:17:34 8 I'm not sure I heard counsel. Are they intending to use two  
09:17:38 9 lawyers on one witness?

09:17:40 10 THE COURT: That won't be permitted.

09:17:42 11 MR. JOHANNESSEN: No, Your Honor.

09:17:43 12 THE COURT: Okay.

09:17:44 13 MR. WILLIS: Thanks. I'm sorry. Then I just  
09:17:44 14 misunderstood. I'm sorry.

09:17:45 15 THE COURT: Okay. Thank you, sir.

09:17:45 16 MR. JOHANNESSEN: One of clarification for my  
09:17:47 17 benefit. Would the motion to exclude the testimony of  
09:17:51 18 Ms. Kelly -- or pardon me, the expert that is designated by  
09:17:56 19 Wells Fargo, you are correct, that in May 10th, the Court  
09:18:00 20 ordered the parties to disclose their experts. Wells Fargo  
09:18:05 21 opted not to. That was over 200 days ago.

09:18:10 22 THE COURT: Okay. I'm going to stop.

09:18:12 23 MR. JOHANNESSEN: Yes, Your Honor.

09:18:12 24 THE COURT: When I say I'm a done, I'm done.

09:18:14 25 MR. JOHANNESSEN: Thank you, Your Honor.

09:18:14 1 THE COURT: I don't want to have anymore  
09:18:16 2 argument. Any reconsideration arguments that happen right  
09:18:18 3 after I make a ruling will not be considered. We don't have  
09:18:20 4 enough time for that today. And quite frankly, I don't want  
09:18:23 5 to get into that at this point.

09:18:25 6 As I indicated at the proceedings on the 11-13, I  
09:18:31 7 thought I was quite clear I did not want to have anymore  
09:18:34 8 filings made. I was not aware of these two motions that  
09:18:37 9 were filed yesterday with respect to these particular  
09:18:40 10 witnesses.

09:18:41 11 I will note, for the record, that when this all  
09:18:43 12 started, this expert was not provided to the plaintiff. When  
09:18:48 13 this -- or the defendant, when this initially all occurred and  
09:18:52 14 sort of came as somewhat of a surprise at the May 10th hearing  
09:18:56 15 in and of itself. So, I think we can all agree that the way  
09:19:00 16 that this has proceeded has not exactly been the way that  
09:19:03 17 would be ideal for all parties involved.

09:19:05 18 So we're going to proceed at this point. I will  
09:19:08 19 hear the witnesses that everyone has brought here to testify  
09:19:11 20 and then I will rule on this subsequent to this hearing. So  
09:19:14 21 with that in mind, let's get started so that we can make sure  
09:19:17 22 that we get all the testimony in at this point.

09:19:19 23 MR. JOHANNESSEN: Thank you, Your Honor.

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1                   **DR. JAMES KELLEY,**  
2                   called as a witness on behalf of the Government,  
3                   was sworn and testified as follows:

09:19:22   3

09:19:33   4                   THE CLERK: Please state your full name for the  
09:19:33   5 record, spelling your last name.

09:19:33   6                   THE WITNESS: My full name is Dr. James M.  
09:19:36   7 Kelley, Madison Kelley, K-e-l-l-e-y.

09:19:41   8                   THE CLERK: Thank you.

09:19:44   9                   **DIRECT EXAMINATION**

09:19:44  10 BY MR. PANKOPF:

09:19:44  11       Q     Dr. Kelley, what is your occupation?

09:19:46  12       A     Uh, I'm a scientist and an engineer. Okay.

09:19:52  13       Q     Are you employed?

09:19:57  14       A     I've been self-employed for years, so.

09:20:07  15                  THE COURT: If I can interrupt you, sir.

09:20:09  16                  I see that I have an exhibit binder here. Was that  
09:20:12  17 provided to the plaintiff's counsel?

09:20:14  18                  MR. PANKOPF: Yes, Your Honor.

09:20:15  19                  THE COURT: And has defense got a binder that's  
09:20:19  20 similar to this?

09:20:19  21                  MR. WILLIS: Your Honor, we don't, but we  
09:20:21  22 can create one. We didn't want to have duplication, so  
09:20:24  23 we've actually culled down our potential exhibits to, looks to  
09:20:29  24 be about five or six maximum.

09:20:31  25                  THE COURT: Okay.

09:20:31 1 MR. WILLIS: We would, perhaps at the break,  
09:20:33 2 arrange to have those numbered. And I can put those in a  
09:20:36 3 binder if that would be more convenient for the Court.

09:20:38 4 THE COURT: No. Actually, I had not anticipated  
09:20:40 5 this because everyone had attached exhibits to their various  
09:20:43 6 motions and I assumed that these are duplications of various  
09:20:46 7 exhibits that have already been attached to the different  
09:20:51 8 motions. In my preparation, I was using the exhibits as they  
09:20:51 9 were attached to the motions to be prepared. So if, when you  
09:20:53 10 go through these witness -- or these exhibits, if you could  
09:20:56 11 point to the exhibit that it matches, and in respect to the  
09:20:59 12 motions and the replies and the oppositions, that would be  
09:21:03 13 very helpful to me as we go through this.

09:21:05 14 And I'm sorry to interrupt, sir, but please  
09:21:08 15 continue.

09:21:08 16 MR. PANKOPF: Thank you, Your Honor.

09:21:09 17 BY MR. PANKOPF:

09:21:12 18 Q Dr. Kelley, can you describe, briefly, the subject matter  
09:21:15 19 of your specialty, your expertise.

09:21:17 20 A Uh, yes, I have, educationally, I have a mast -- a B.A.  
09:21:25 21 in mathematics, with a minor in chemistry and philosophy. I  
09:21:29 22 have a Master's Degree in Electrical Engineering from U.C.  
09:21:35 23 Santa Barbara. And I have a Ph.D degree in Electrical and  
09:21:39 24 Computer Engineering from the University of California,  
09:21:41 25 Santa Barbara.



09:21:42 1 From a work experience, uh, I was involved in  
09:21:47 2 reactor -- nuclear reactor corporate design unit for five at  
09:21:52 3 General Electric. I was involved with a Raytheon Missile  
09:22:00 4 Systems division in the creation of the B-1 Bomber, repel  
09:22:06 5 stop or attack radar. And, um, also with the anti ballistic  
09:22:15 6 missile system.

09:22:16 7 I was mathematician at Stanford Research Institute  
09:22:20 8 in Menlo Park, California.

09:22:21 9 And let's see, what else?

09:22:23 10 I started, I ran my own company for 10 years,  
09:22:26 11 building, uh, in-circuit emulators for highly specialized  
09:22:40 12 computers.

09:22:40 13 COURT REPORTER: Building what?

09:22:40 14 THE WITNESS: In -- i-n-c-i-r-c-u-i-t,  
09:22:41 15 emulators, E-m-u-l-a-t-o-r-s, which are specialized tools for  
09:22:42 16 engineers and scientists, which were also used to program the  
09:22:46 17 Space Shuttle payload computer.

09:22:48 18 Oh, and I also worked in infrared guidance system  
09:22:58 19 for a missile system for shor -- it's a shoulder launched  
09:23:07 20 anti missile system to shoot down shoulder launched missiles  
09:23:11 21 within two seconds. So, they only had two seconds to do it.

09:23:15 22 And I had patents in, uh -- I have three U.S.  
09:23:20 23 patents in computer technology.

09:23:27 24 BY MR. PANKOPF:

09:23:27 25 Q Do you have any specializations within the fields that

09:23:31 1 you've identified?

09:23:32 2 A Uh, yes. Part of the PAT program, we had specialization  
09:23:39 3 fields. And one of them here is the single processing and it  
09:23:44 4 has to do with image processing and speech processing. And  
09:23:51 5 in connection with that, I did create a digital radio for  
09:23:55 6 Litton Industries for F-16 fire aircraft.

09:24:00 7 Q Does your specialty involve forensic document  
09:24:18 8 examination?

09:24:19 9 A Well, forensic document examination, uh -- the procedures  
09:24:25 10 of forensic document examination involve the use of scan, you  
09:24:29 11 know, photoscanners, microscopes, you know, and inspection,  
09:24:34 12 according to the SWG doc and ASTM standards, and the procedures  
09:24:41 13 are specified in there.

09:24:43 14 Q So are you familiar with the printing processes of the  
09:24:49 15 printers?

09:24:50 16 A Yes. Yeah, you have to be nowadays because there are  
09:24:53 17 different kinds of printers. And inkjet printers, in  
09:25:00 18 particular, have advanced greatly over the years, and they're  
09:25:04 19 responsible for the creation of about 6 percent of the  
09:25:08 20 counterfeit money in the United States according to the FBI.  
09:25:12 21 So, they're that good. They can make a \$100 bill and that can  
09:25:16 22 pass.

09:25:18 23 And there's some interesting cases of this in the --  
09:25:21 24 which you can find online, where people have gotten caught  
09:25:25 25 using Hewlett Packard inkjet printers and making \$100 bills.

09:25:31 1 And so making a \$100 bill is a lot harder than putting a  
09:25:36 2 signature on a loan document.

09:25:38 3 Q Did I hear you correctly? Did you say you attended --  
09:25:41 4 did you tell me what university you attended?

09:25:43 5 A I graduated from University of California, Santa Barbara,  
09:25:47 6 with a Master's Degree in Electrical Engineering. And I  
09:25:51 7 graduated with a Ph.D degree from the University of  
09:25:55 8 California, Santa Barbara, in electrical and computer  
09:25:58 9 engineering as to design of computers.

09:26:02 10 Q And your undergraduate degree was earned where?

09:26:05 11 A San Jose State University.

09:26:07 12 Q And did you say that was mathematics?

09:26:10 13 A Yeah, in mathematics. But, I worked my way through  
09:26:14 14 college. I was working at General Electric in their nuclear  
09:26:17 15 reactor physics group, which consisted of about five people  
09:26:21 16 from MIT, MIT and Stanford nuclear engineering. They had  
09:26:30 17 nuclear engineering degrees, so.

09:26:33 18 Q Did you have any minors at your undergrad?

09:26:36 19 A Yes. I, I was -- when I came to college, I was an  
09:26:41 20 honors chemistry student and a honors humanities and advanced  
09:26:46 21 placement mathematics. So I took a chemistry minor to --  
09:26:50 22 because I was getting plenty of physics at General Electric.

09:26:56 23 Q Did you have any specialized degrees or training?

09:26:59 24 A Well, uh, I'm a licensed private pilot with a tail  
09:27:06 25 guarder certification and I have Scuba.

09:27:10 1 Uh, as far as -- what other areas you mean, like  
09:27:15 2 specialized training?

09:27:17 3 Q Right. Did you, did you attend classes at Lowell  
09:27:23 4 Technical Institute?

09:27:24 5 A I did. Yeah, that was when I was working for  
09:27:27 6 Raytheon Missile Systems, they wanted me to take a course in  
09:27:31 7 nuclear reactor physics at Lowell Technical Institute. I was  
09:27:31 8 just kind of interested in it. I wasn't doing it any longer.  
09:27:35 9 I just thought I'd take a course unit there.

09:27:38 10 And I also took training in information theory at  
09:27:43 11 Stanford. And also Raytheon sent me to conferences with  
09:27:49 12 the -- they're basically they're the leading world experts in  
09:27:52 13 information theory.

09:27:54 14 Q Can you give --

09:27:56 15 A In the East Coast.

09:27:56 16 Q Can you give us a synopsis from, you know, when you  
09:27:59 17 graduated from your undergrad to the present time of what  
09:28:02 18 positions you held at the various companies --

09:28:05 19 A Okay.

09:28:06 20 Q -- in your company?

09:28:07 21 A Okay. Well, I worked first for General Electric for  
09:28:13 22 about five years. And when I graduated, I had some choices  
09:28:21 23 to make because I was offered two jobs with hydrogen bomb  
09:28:25 24 designing works at Lawrence Livermore Labs, and also a nuclear  
09:28:29 25 rocket that they had under development there at the time.

09:28:32 1 I ended up taking a job at Stanford Research  
09:28:36 2 Institute as a mathematician because I wanted to continue my  
09:28:39 3 education, and it was near Stanford University. And I was  
09:28:43 4 assigned there to reviewing tactical electronic battle field  
09:28:49 5 environments, to creating a (unintelligible) program for  
09:28:55 6 sub-optimum deployment of missile systems in the United  
09:28:59 7 States, you know, in different states of the United States.

09:29:02 8 And I also had a job of looking at nuclear blast  
09:29:10 9 damage in cities in the United States, which I did not like.

09:29:24 10 Q Is there anything else that -- I know you've talked about  
09:29:27 11 it briefly before --

09:29:28 12 A Yeah, well --

09:29:34 13 Q (Unintelligible.)

09:29:34 14 COURT REPORTER: Don't talk at the same time.

09:29:34 15 BY MR. PANKOPF:

09:29:34 16 Q Go ahead.

09:29:35 17 A Okay. Well, yeah, and then I left there to go, uh, to a  
09:29:41 18 con -- a software consulting firm in Houston, Texas, that was  
09:29:44 19 doing work for NASA. And, uh, and I ended up -- that was  
09:29:50 20 about a year because that company ended up going out of  
09:29:53 21 business. So during the course of that year, I went to  
09:29:55 22 Washington, D.C., where I was working on a program, some  
09:29:59 23 neighborhood youth core database for -- you know, managing  
09:30:03 24 that.

09:30:03 25 And then I moved to Raytheon Missile Systems as a

09:30:08 1 consultant first. And when the company went out of business  
09:30:11 2 and Raytheon hired me as a senior engineer. And I worked  
09:30:21 3 there -- on the anti ballistic missile system at first,  
09:30:26 4 developed some new mathematical algorithms that were used in  
09:30:33 5 the testing. And then they moved me to the, I think it's a 7,  
09:30:39 6 task 7, which was a prototype of the B-1 Bomber radar system.

09:30:48 7 And then I was appointed manager of that group,  
09:30:53 8 overseeing the high repel stopper, meaning repel stopper, or  
09:31:01 9 repel stopper, which was a radar that was tested at Holloman  
09:31:05 10 Air Force Base in New Mexico, and Wright-Patterson in Ohio,  
09:31:10 11 and worked -- then I went back to Raytheon, and the chief  
09:31:18 12 scientist of, of -- in Santa Barbara wanted me to come to  
09:31:25 13 work or stay in Bedford until the electronic countermeasures  
09:31:32 14 portions became active of their contract. But, I wanted to  
09:31:35 15 move to the West Coast because my family is on the West Coast.

09:31:39 16 Q Right.

09:31:39 17 A And so I left Raytheon and went to work for Ross Borroughs  
09:31:43 18 Company out of San Francisco. I got a call one day from  
09:31:47 19 Raytheon and they wanted me to come down there to commit to  
09:31:52 20 working on the development of the B-1 Bomber electronic  
09:31:57 21 countermeasures system. So I was working for the chief  
09:32:01 22 scientist of Raytheon in Santa Barbara, Goleta, you know,  
09:32:07 23 Goleta area of Santa Barbara. And I stayed there for about a  
09:32:10 24 year. And they gave me a list of problems when I came in  
09:32:14 25 and I solved every problem. And I also designed, ended up

09:32:18 1 designing the prototype electronic countermeasure processor to  
09:32:23 2 meet the air force specifications because they had -- they  
09:32:26 3 were extreme, extreme requirements. And we didn't, when we  
09:32:30 4 started out, we didn't know how to do it.

09:32:35 5 Q Do you have any memberships to any professional societies  
09:32:39 6 or associations or organizations?

09:32:41 7 A Yes. I'm a member of the Association of Computer  
09:32:44 8 Machinery, and the Institute of Electrical and Electronic  
09:32:50 9 Engineers. And these are the largest associations in the  
09:32:53 10 world of their kind. They're worldwide organizations.

09:32:58 11 Q What is the Computational Intelligence for ACM?

09:33:03 12 A It's basically artificial intelligence.

09:33:06 13 Q Is it -- what do you have to do with that?

09:33:08 14 A Well, I'm monitoring that because some of the computer  
09:33:12 15 patents I have relate to artificial intelligence. They're  
09:33:17 16 associative memories.

09:33:19 17 Q Is that another professional organization you're a member  
09:33:22 18 of?

09:33:22 19 A I triple E, yeah. Uh-huh. Well, the computational  
09:33:27 20 science is a sub -- a special interest group within the I  
09:33:32 21 triple E.

09:33:37 22 Q Are there any honors or acknowledgments or awards you've  
09:33:41 23 received in your field?

09:33:42 24 A Well, yeah, I was -- I worked, you know -- when I, later  
09:33:47 25 on, when I worked for Chipson Technologies (phonetic), I was

09:33:51 1 elected Fellow, Engineering Fellow there, which is an honorary  
09:33:55 2 position within the company. It was later acquired by  
09:33:58 3 Intel Corporation.

09:33:59 4 Q Did a lot of these companies that you worked for work for  
09:34:02 5 the government?

09:34:03 6 A Chips didn't, but Raytheon certainly did and Litton  
09:34:10 7 did and Stanford Research Institute did. General Electric  
09:34:16 8 sometimes did. We worked with Oak Ridge National Laboratory  
09:34:20 9 and I put the Oak Ridge National Laboratory library up on the  
09:34:25 10 General Electric computers. That was one of my tasks.

09:34:29 11 And I also had to learn to run all the codes, the  
09:34:33 12 nuclear codes. That's why they wanted to hire me on the  
09:34:37 13 hydrogen bomb project. I run all the nuclear codes.

09:34:41 14 And I was training people at General Electric that  
09:34:44 15 just graduated, like, with their master's degrees in nuclear  
09:34:46 16 engineering, so I would train them in how to use those codes.

09:34:50 17 Q Did you ever get any ratings from the government?

09:34:55 18 A Yeah. When I was going to Santa Barbara for my  
09:35:00 19 master's degree program, one of the professors there was  
09:35:03 20 (unintelligible) for summer employment, so the U.S. Navy rated  
09:35:06 21 me as a GS-18.

09:35:08 22 Q What does that mean?

09:35:09 23 A I don't know. I thought -- I didn't know what it meant  
09:35:12 24 at the time, but I later found out. I think that's the  
09:35:15 25 highest rating that they had in -- so and they said would you



09:35:20 1 take a lower one. And I said, well, no, that's okay. Thanks  
09:35:26 2 a lot. And I went and I got a job up in the, you know, in the  
09:35:28 3 San Jose area with a assess control company for the summer  
09:35:31 4 until I had a fellowship from the -- you know, the school had  
09:35:36 5 arranged for me to complete my Ph.D by providing me with a,  
09:35:41 6 you know, basically money to do that. So, yeah.

09:35:44 7 Q It was the highest rating they had for what?

09:35:47 8 A I think it was the highest rating they had for engineers  
09:35:50 9 at that -- in that the navy missile place down there, so.

09:35:57 10 Q Did it relate to your pay grade or something of that  
09:36:00 11 nature?

09:36:00 12 A Yes. A pay grade. Yeah, it's basically a pay grade.  
09:36:03 13 It's a rank, pay rank.

09:36:08 14 Q So after this career in electrical engineering, computer  
09:36:13 15 software designing and what have you, how did you segue into  
09:36:17 16 your present field of document examination?

09:36:26 17 A Well, that came later. I was asked in 2012 by a private  
09:36:31 18 detective in Montana to look at his note because it had ink  
09:36:35 19 that went from blue to black in it, and it was delivered to  
09:36:38 20 him electronically. So he sent it down to me and I put it  
09:36:42 21 in Adobe Illustrator, and I could see that the signature,  
09:36:47 22 which went from blue to black ink, was constructed in Adobe  
09:36:53 23 Illustrator. And it took about 5 or -- 5 minutes to do that,  
09:36:57 24 5 or 10 minutes after I loaded it in. And I could turn the  
09:37:01 25 signature on and off, and different parts of it would

09:37:04 1 appear -- there are little switches in Adobe. So -- and the  
09:37:08 2 reason is is the signature was in layers and you just turn the  
09:37:10 3 layers on and that signature appears in the right place.

09:37:13 4 THE COURT: Sir, can you make sure that you  
09:37:15 5 speak directly into the microphone so that we can hear you.

09:37:18 6 THE WITNESS: Yes.

09:37:22 7 BY MR. PANKOPF:

09:37:23 8 Q Do you have some type of expertise in Adobe photoshop?

09:37:28 9 A Well, I was using Adobe Illustrator.

09:37:31 10 Q I'm sorry. Adobe Illustrator.

09:37:34 11 A Yeah. I was using both of them. But for this one, the  
09:37:38 12 Adobe Illustrator was able to demonstrate that.

09:37:41 13 And also there's no pen that -- where the ink goes  
09:37:43 14 from blue to black to blue, so it was pretty obvious that this  
09:37:48 15 was not an authentic document, or even a copy of an authentic  
09:37:53 16 document.

09:37:53 17 Q Are there certain standards that you follow as a forensic  
09:37:57 18 document examiner as to laser or inkjet printers?

09:38:02 19 A Yeah. The standards are in two places. One is the  
09:38:07 20 association for testing materials, which is forensic document  
09:38:14 21 standards. And the second place they are, which are  
09:38:18 22 essentially identical, is the SWG doc, which stands for  
09:38:24 23 south -- Scientific Working Group and documents. And the  
09:38:29 24 FBI belongs to that group. The FBI lab belongs to the SWG  
09:38:34 25 doc and they worked with the AST for awhile until some

09:38:39 1 controversy developed, which I'm not familiar with. I'm not  
09:38:43 2 familiar with what caused this split off from the two groups,  
09:38:46 3 but both groups still provide standards. And, beyond that, I  
09:38:54 4 don't know what the nature of that controversy was.

09:38:57 5 Q Do you have that exhibit book sitting in front of you,  
09:39:02 6 Dr. Kelley?

09:39:02 7 A I do not.

09:39:14 8 Q Would you please look at Exhibit 8.

09:39:23 9 A I have it.

09:39:24 10 Q Okay. Review the document, please.

09:39:26 11 A Yeah, it's the standard guide --

09:39:29 12 Q I mean review it to yourself.

09:39:30 13 A Oh, I see.

09:39:33 14 (Witness reviews document.)

09:39:44 15 Q Have you had a chance to review it?

09:39:46 16 A Yes.

09:39:46 17 Q Can you tell us what Exhibit 8 is?

09:39:48 18 A Yeah, it's a four-page document and it's a guide -- it's  
09:39:54 19 a standard guide for the examination of documents produced  
09:39:58 20 with a liquid inkjet technology.

09:40:03 21 Q Are these the standards you follow when you examine a  
09:40:06 22 document?

09:40:06 23 A Yes. Yes. There's nothing -- I don't do anything that's  
09:40:10 24 not in these standards.

09:40:13 25 Q Is there anything esoteric about these standards?

09:40:18 1 A No. They define what they think is important, and this  
09:40:23 2 guide was agreed to by all those members of these groups of  
09:40:27 3 the SWG doc group, which is part of the ASTM at the time this  
09:40:33 4 was done. And so this was the opinion of the industry at the  
09:40:40 5 time, so this is the their opinion of what the standard should  
09:40:44 6 be and what the procedures should be.

09:40:48 7 Q Does the standard describe the methodology you should use  
09:40:53 8 when examining a document?

09:40:54 9 A Yes.

09:40:54 10 Q And do you -- and you follow it?

09:40:57 11 A Yes.

09:40:58 12 Q Is it -- is this standard grounded in the generally  
09:41:08 13 accepted body of knowledge and experience in the field of  
09:41:11 14 forensic document examiners?

09:41:14 15 A They all agree to what's in the standard; so, yes.

09:41:17 16 Q Does this particular ASTM standard state that itself --

09:41:24 17 MR. WILLIS: Objection, Your Honor. The  
09:41:25 18 document speaks for itself.

09:41:30 19 THE COURT: I agree. That's sustained.

09:41:35 20 And Mr. Pankopf, I would actually like the witness  
09:41:39 21 to go back. If you can go over -- was there evidence of him  
09:41:47 22 being trained as a forensic document examiner on using these  
09:41:54 23 standards? I have not heard any and I have not seen any in  
09:41:57 24 the record. And that would be really important for us to  
09:41:59 25 establish here today.

09:42:01 1 BY MR. PANKOPF:

09:42:01 2 Q What type of training do you have in forensic document  
09:42:05 3 examination?

09:42:07 4 A I don't have any specific formal training in it, but I  
09:42:10 5 can -- this document is only four pages long and it involves  
09:42:12 6 everything I already know how to do; so microscopes, scanners,  
09:42:17 7 light use of illumination, the equipment. And so -- and I  
09:42:22 8 already know how to use it. In fact, I know how to design a  
09:42:25 9 lot of it, so.

09:42:26 10 Q And would you characterize yourself as a scientist?

09:42:29 11 A Yeah. I'm both a scientist and an engineer. Yeah.

09:42:33 12 Q Do you know how to examine problems?

09:42:39 13 A Oh, you mean --

09:42:40 14 Q Excuse me. Let me finish my question.

09:42:42 15 A Okay.

09:42:42 16 Q Do you know how to examine problems?

09:42:44 17 A Yes.

09:42:45 18 Q And do you know how to read, you know, this ASTM and  
09:42:50 19 apply the methodology?

09:42:52 20 A Yes. It's straightforward. They define their terms.  
09:42:55 21 They define what's important to them in terms of features  
09:42:59 22 produced by the inkjet. I look for the features that they've  
09:43:03 23 identified and I take pictures. They want you to record the  
09:43:09 24 results, so I take hundreds of pictures of these documents.

09:43:13 25 Typically, I have 11 to 14 gigabytes of photographs

09:43:18 1 that are both microscope photographs and photocopier  
09:43:23 2 photographs because the scanner, IRS photocopier can be  
09:43:29 3 used as a microscope as well.

09:43:32 4 Q How does examining the authenticity of a document as to  
09:43:45 5 whether it was created by a laser or inkjet printer compare to  
09:43:52 6 the numerous, if not countless, problems that you've solved  
09:44:00 7 over your career as a scientist or an nuclear engineer or  
09:44:05 8 electrical engineer?

09:44:07 9 MR. WILLIS: Objection, Your Honor. Vague,  
09:44:09 10 argumentative, and compound.

09:44:10 11 THE COURT: I agree. It is a compound question,  
09:44:12 12 sir. If you could break that up, that would make it easier  
09:44:15 13 for the witness to answer.

09:44:17 14 BY MR. PANKOPF:

09:44:18 15 Q How does examining a document as a -- having been created  
09:44:25 16 by a laser, an inkjet printer, compare to the problems that  
09:44:31 17 you solved as a nuclear engineer?

09:44:34 18 MR. WILLIS: Objection. Vague. And relevance.

09:44:36 19 THE COURT: I'm going to allow it. Thank you,  
09:44:38 20 sir.

09:44:39 21 THE WITNESS: Should -- can I answer or --

09:44:42 22 MR. PANKOPF: Yeah.

09:44:43 23 THE COURT: Yes, please.

09:44:44 24 THE WITNESS: Um, well, you know, nuclear  
09:44:47 25 physics is a lot harder than this, so it doesn't -- you

09:44:50 1 know, this doesn't require a master's degree, you know, this  
09:44:55 2 work. In fact, most of the people working in the document  
09:44:57 3 examination field are not even technically trained, like, you  
09:45:01 4 know, they don't have technical degrees. They have degrees in  
09:45:04 5 various --

09:45:04 6 MR. WILLIS: Objection, Your Honor. I move to  
09:45:06 7 strike. That was non-responsive to the question. It was  
09:45:08 8 speculation on the part of the witness.

09:45:09 9 THE COURT: And I agree, so that is sustained.

09:45:21 10 THE WITNESS: Uh-huh.

09:45:21 11 BY MR. PANKOPF:

09:45:21 12 Q How does the examination of the document having been  
09:45:23 13 created by an inkjet printer compare to the problems you  
09:45:27 14 solved as an electrical engineer?

09:45:30 15 A They're is -- they're, really, totally different  
09:45:33 16 problems, you know. I mean, radar and -- radars do involve  
09:45:38 17 image processing though.

09:45:47 18 Q Does the methodology in this particular ASTM tell you  
09:45:53 19 what type of equipment to use?

09:45:55 20 A Yeah.

09:45:56 21 MR. WILLIS: Your Honor, again, the document  
09:45:58 22 speaks for itself.

09:46:03 23 THE WITNESS: Section 6 --

09:46:04 24 THE COURT: Sir, I have not ruled on the  
09:46:06 25 objection.

09:46:06 1 THE WITNESS: Oh. I'm sorry.

09:46:08 2 THE COURT: The document does speak for itself  
09:46:15 3 with respect to that; however, I'm going to allow some leeway  
09:46:20 4 because I want to get as much evidence on the record as we  
09:46:23 5 can.

09:46:23 6 So I'm going to allow it, but I would ask  
09:46:26 7 Mr. Pankopf to move on to something else after that question.

09:46:35 8 Please answer the question, sir.

09:46:37 9 MR. PANKOPF: So you can answer it now.

09:46:38 10 THE WITNESS: I can answer now?

09:46:39 11 Okay. Well, 6.2 talks about specific magnification,  
09:46:44 12 so that would imply the use of microscopes and high risk  
09:46:49 13 scanners.

09:46:50 14 Uh, rulers, they want you to measure things. The,  
09:46:53 15 um, photocopier can measure things up to one ten-thousandths  
09:47:01 16 of an inch.

09:47:02 17 Other apparatus would be, uh, magnets. I sometimes  
09:47:06 18 use magnets to determine if the ink is ferromagnetic. And  
09:47:10 19 that can be important because they don't make ferromagnetic  
09:47:14 20 pens. They make bar codes. Inkjets, uh, frequently have  
09:47:20 21 ferromagnetic ink in them, so I'm looking for that.

09:47:24 22 Imaging equipment includes the microscopes again,  
09:47:28 23 and the scanners primarily. And they would include things  
09:47:36 24 like infrared, ultraviolet, and also the regular visual  
09:47:42 25 spectrum that were used too.



09:47:47 1 Reference materials could be other things that we  
09:47:50 2 know to be good, you know, good things to compare to.

09:47:54 3 And then the other requirements, sufficient time to  
09:47:58 4 do all this -- and we're always time bound in these reports,  
09:48:02 5 so we can only -- I can't report on absolutely everything. I  
09:48:07 6 have to report on the things that are probative, when I have  
09:48:11 7 probative things, and things which are indicative, to the  
09:48:15 8 extent that I have time to do that and, you know, to evaluate  
09:48:21 9 it.

09:48:24 10 MR. PANKOPF: Your Honor, I would like to have  
09:48:26 11 marked Plaintiff's Exhibit 8 as an exhibit. Again, I didn't  
09:48:29 12 know whether we want to mark it as we have it in our book  
09:48:33 13 or -- yes. Okay.

09:48:34 14 So I'd mark it as Exhibit 8 and move it into the  
09:48:37 15 record.

09:48:37 16 THE COURT: Is there any objection?

09:48:38 17 MR. WILLIS: We have no objection, Your Honor.

09:48:39 18 THE COURT: So admitted.

09:48:41 19 (Whereupon, Exhibit 8 -- a document, ws received in  
09:48:42 20 evidence. 8 received.)

09:48:42 21 BY MR. PANKOPF:

09:48:43 22 Q And Dr. Kelley, can you look at Exhibit 9, please.

09:48:50 23 MR. PANKOPF: And Your Honor, this is the --  
09:48:52 24 this is document 225-4 attached to the reply brief, in support  
09:48:59 25 of the reply brief.

09:49:00 1 THE COURT: Okay. And is --

09:49:07 2 MR. PANKOPF: I mean --

09:49:08 3 THE COURT: -- is this the same document?

09:49:09 4 MR. PANKOPF: It is, Your Honor. It has the  
09:49:11 5 Court's stamp on top, the filing stamp.

09:49:14 6 THE COURT: So the document that's at 8 and  
09:49:17 7 document that's at 9, are these the same?

09:49:20 8 MR. PANKOPF: No, Your Honor. The, uh, document  
09:49:25 9 Exhibit 8 is the ASTM standard.

09:49:28 10 THE COURT: Okay.

09:49:28 11 MR. PANKOPF: And just for your information,  
09:49:31 12 it's identical to the SWG doc. I was going to ask him about  
09:49:37 13 that and then move it into evidence.

09:49:39 14 THE COURT: Is there any objection to the  
09:49:40 15 admission of Exhibit 9, sir?

09:49:41 16 MR. WILLIS: No, Your Honor.

09:49:42 17 THE COURT: Okay. It will be admitted.

09:49:46 18 (Whereupon Exhibit 9 -- a document, was received in  
09:49:46 19 evidence.)

09:49:46 20 BY MR. PANKOPF:

09:49:47 21 Q Are you familiar with these standards?

09:49:48 22 A Yes.

09:49:49 23 Q And how do they compare to the ASTM standards?

09:49:53 24 A They're, word for word, identical.

09:50:01 25 Q So Dr. Kelley, if I understand your testimony, your

09:50:04 1 previous testimony, the first time you examined a document  
09:50:07 2 was back in the year 2012, is that correct?

09:50:10 3 A Yes.

09:50:12 4 Q And have you, have you continued examining documents  
09:50:17 5 since then?

09:50:18 6 A Yes. The private detective, you know, was kind of  
09:50:23 7 excited and he started sending other people with -- you know,  
09:50:27 8 one of their staff looked at, and I -- so I was just doing it  
09:50:31 9 for free for a while. And it started taking up more time, so  
09:50:35 10 uh, it, uh -- that's how that happened.

09:50:43 11 Q Okay. Dr. Kelley, would you take a look at Exhibit 6 in  
09:50:47 12 your book, please.

09:50:51 13 THE COURT: If I could just interject a question  
09:50:53 14 because I want to be clear on this.

09:50:55 15 So as I understand it, sir, you did not receive any  
09:50:59 16 formal training in forensic document examinations, is that  
09:51:02 17 correct?

09:51:02 18 THE WITNESS: That's correct.

09:51:03 19 THE COURT: So your experience and expertise  
09:51:06 20 comes simply from having received a document that you  
09:51:09 21 examined, and then moving forward with those examinations.

09:51:12 22 Is that accurate.

09:51:13 23 THE WITNESS: That's right.

09:51:14 24 THE COURT: Okay. Thank you, sir.

09:51:15 25 Please go back to -- was it Exhibit 6?

09:51:19 1 MR. PANKOPF: Yes, Your Honor.

09:51:20 2 THE COURT: Thank you.

09:51:24 3 MR. PANKOPF: And again, for your clarification,  
09:51:27 4 Your Honor, this is document 218-6, which was attached --

09:51:31 5 THE COURT: Okay.

09:51:31 6 MR. PANKOPF: It's separated from Dr. Kelley's  
09:51:34 7 report, that was attached in support of the motion itself.  
09:51:39 8 And you have the file stamp on top.

09:51:42 9 THE COURT: I see that, sir. Thank you.

09:51:43 10 Is there any objection to that exhibit number 6,  
09:51:46 11 sir?

09:51:46 12 MR. WILLIS: Your Honor, we do not object to  
09:51:49 13 the portions of Exhibit 6 that detail the alleged experience.  
09:51:55 14 We do object to the first two pages, which is, I think at  
09:52:01 15 best, a very biased statement of the industry that he believes  
09:52:07 16 exists, and there is nothing to support those allegations.

09:52:12 17 MR. PANKOPF: It's opinion testimony.

09:52:17 18 MR. WILLIS: Only, for example, I -- he states  
09:52:19 19 in this document "it's easy to fabricate a mortgage document."

09:52:23 20 THE COURT: And I've read this document several  
09:52:26 21 times and I'm very familiar with it.

09:52:28 22 MR. WILLIS: Oh. Well, in that case --

09:52:30 23 THE COURT: I'm going to go ahead and allow it  
09:52:32 24 to be admitted, with the caveat that I understand the position  
09:52:39 25 of the defense that this really is more statements being made

09:52:42 1 by the defendant's -- or by plaintiff's expert that are more  
09:52:45 2 in the realm of his opinions of the industry in general, but  
09:52:50 3 not specific to this case. So with that caveat, the exhibit  
09:52:56 4 will be admitted.

09:52:57 5 (Whereupon, Exhibit 6 -- a document, was received in  
09:53:03 6 evidence.)

09:53:03 7 BY MR. PANKOPF:

09:53:05 8 Q How many -- Dr. Kelley, how many times have you given  
09:53:08 9 testimony in court as an expert witness?

09:53:14 10 A Including what? Summary judgments? Uh --

09:53:17 11 Q No.

09:53:18 12 A Evidentiary hearings? Everything? Or --

09:53:22 13 Q Well, I would exclude motions for summary judgment, you  
09:53:25 14 know, in support or against. You know, just limit the  
09:53:29 15 question to where you actually were up in the stand there  
09:53:33 16 giving testimony.

09:53:34 17 A It's got to be at least 20 or 30 times. Yeah.

09:53:40 18 Q And in regards to either supporting a motion for summary  
09:53:45 19 judgment or opposing a motion for summary judgment, how many  
09:53:50 20 times have you offered your expert opinion report in support  
09:53:53 21 of either?

09:53:54 22 A Actually, it depends on, you know, on -- a complete  
09:54:01 23 answer would depend on where you are. Like, in Hawaii, they  
09:54:04 24 usually don't -- they go by the reports, you know. And so in  
09:54:08 25 Hawaii, a lot of the summary judgment motions you just --

09:54:11 1 decided by looking at two reports, one from expert A and the  
09:54:18 2 other one expert B. So they didn't, they didn't bother to  
09:54:22 3 take -- you know, call the people in for testimony. Uh, other  
09:54:27 4 places, they do.

09:54:28 5 And so I haven't really counted them all, but, uh,  
09:54:34 6 a lot of times I'm giving depositions, so a lot of times I'll  
09:54:41 7 be deposed by an opposition and --

09:54:43 8 Q Okay. Depositions don't really count.

09:54:45 9 A Okay.

09:54:46 10 Q It's kind of a different animal.

09:54:47 11 A Okay.

09:54:47 12 Q So we don't really need to know about that.

09:54:49 13 THE COURT: Well, I think that now requires  
09:54:51 14 clarification.

09:54:52 15 Sir, you've responded that you've testified 20 to  
09:54:54 16 30 times. Are you including in that your depositions or are  
09:54:58 17 you only specifically relating to hearings or trials?

09:55:01 18 THE WITNESS: I think I'm probably including the  
09:55:04 19 depositions.

09:55:05 20 THE COURT: Okay.

09:55:06 21 THE WITNESS: Yeah.

09:55:06 22 THE COURT: Then can you re-ask the question,  
09:55:08 23 sir.

09:55:08 24 MR. PANKOPF: Yes, Your Honor.

25 ///

09:55:11 1 BY MR. PANKOPF:

09:55:11 2 Q Okay. With that in mind -- you're excluding your  
09:55:14 3 deposition testimony -- how many times have you actually  
09:55:17 4 testified in court as an expert witness, when you're actually  
09:55:21 5 sitting next to the judge in the witness chair?

09:55:25 6 A Okay. One -- maybe, maybe 10 times, you know, where  
09:55:41 7 there's actually, you know, court, you know, type hearing,  
09:55:50 8 right.

09:55:50 9 THE COURT: And I'm sorry to interrupt again,  
09:55:52 10 but I think a follow-up question is necessary.

09:55:55 11 When you say 10 times, are those all specific to  
09:55:59 12 issues related to document examination?

09:56:02 13 THE WITNESS: Yes.

09:56:03 14 THE COURT: Okay.

09:56:14 15 BY MR. PANKOPF:

09:56:20 16 Q Now in this particular case, did you conduct an  
09:56:24 17 examination or a personal examination or testing of the  
09:56:28 18 subject documents, the note and the deed of trust, and the  
09:56:32 19 rider that was attached to the deed of trust?

09:56:36 20 A Yes. On June 8th, in Las Vegas.

09:56:38 21 Q That was going to be my next question, when you did  
09:56:41 22 examine it.

09:56:43 23 June 8 of this year?

09:56:44 24 A Yeah.

09:56:44 25 Q And again, that was in Las Vegas.

09:56:49 1 How did you examine the document?

09:56:52 2 A Well, I --

09:56:53 3 Q Documents.

09:56:54 4 A -- I began with a visual examination of the documents to  
09:56:57 5 see if there's any obvious thing to be looked at because that  
09:57:01 6 helps guide what I look at. And I'll use a oblique lighting  
09:57:10 7 at the visual level. And also I use tactile things to  
09:57:13 8 determine if there are any indentations that can be felt,  
09:57:17 9 say, in the initials or signature. And that's at the  
09:57:22 10 visual -- you know, at the human level, without, you know --  
09:57:25 11 just using lights basically.

09:57:27 12 Q Okay. So what are you looking for, specifically, when  
09:57:31 13 you're visually examining --

09:57:33 14 A The features --

09:57:34 15 Q -- the documents?

09:57:34 16 A The features of the document. Like, if it was made with  
09:57:37 17 a ballpoint pen, there may be indentations that I can detect.  
09:57:44 18 With the lighting, I can, to some extent -- I mean, if there's  
09:57:49 19 obvious pixelation in the signature, of course that would be  
09:57:54 20 -- indicate it's fake immediately, without looking to a, you  
09:57:58 21 know, a photocopier or a microscope picture.

09:58:03 22 Q Do the standards that we -- or that you told us about,  
09:58:09 23 tell you to conduct a visual examinations beforehand?

09:58:14 24 A Yeah. Yeah, they're part of the procedure, including the  
09:58:19 25 oblique lighting.



09:58:20 1 Q So after you've visually examined them, what is the  
09:58:24 2 process?

09:58:25 3 A Well, then I'll scan the -- each page of the document at  
09:58:33 4 twelve hundred pixels per inch. And this is the capture of  
09:58:37 5 the whole image with a high quality scan. Right?

09:58:40 6 Q (Nodding head affirmatively.)

09:58:41 7 A So if it's -- after that, I'll take the scanner and I'll  
09:58:48 8 zero in using the marquee function, and I'll extract the  
09:58:52 9 signature at up to nine thousand six hundred pixels per inch.

09:58:56 10 Q Excuse me. Are you doing that when you go back to your  
09:58:59 11 office?

09:59:00 12 A No, no --

09:59:01 13 Q Or are you doing it --

09:59:02 14 A No, I do it --

09:59:02 15 Q -- at the examination?

09:59:03 16 A No, I do it during the examination. That's why the  
09:59:06 17 examination takes so long.

09:59:07 18 Q Right.

09:59:07 19 A Because --

09:59:08 20 Q How long did the examination take?

09:59:10 21 A Well, to scan at twelve hundred pixels per inch, takes  
09:59:13 22 approximately three minutes with the scanner that I put on the  
09:59:15 23 table down there. That's a V-550550 Epson. And it has an  
09:59:20 24 optical density of 3.4 out of 4, which means it's really good  
09:59:24 25 with color. Okay?

09:59:26 1 And it takes three minutes. So when I take so many  
09:59:30 2 pictures, it takes three hours to complete the examination,  
09:59:33 3 which is a lot.

09:59:36 4 Q Is that how long it took you to complete this  
09:59:39 5 examination?

09:59:39 6 A Yeah. It typically takes three hours. Sometimes it  
09:59:42 7 could take more if there were more documents than we had.

09:59:45 8 Q And how many total pages did you examine?

09:59:48 9 A Well --

09:59:49 10 Q With -- considering the deed of trust and the note all  
09:59:52 11 together. Roughly.

09:59:53 12 A Well, I don't remember the exact page count, but I  
09:59:57 13 examined the deed of trust, the condominium rider, and the  
10:00:01 14 note, promissory note. And they weren't the long form, so --  
10:00:06 15 but I extracted all of the initials from every document at  
10:00:10 16 high resolution so that I could do color comparisons. And I  
10:00:15 17 extracted the signatures at high resolution.

10:00:19 18 In some cases, I can get it up to twelve thousand  
10:00:22 19 six hundred pixels per inch. And I -- and then I examined,  
10:00:29 20 you know, I examined this for features that they identify  
10:00:33 21 within the inkjet standard or otherwise. Sometimes a laser  
10:00:38 22 jet standard. So if a document was created, the form was  
10:00:41 23 created with a laser printer, it's going to be made in toner,  
10:00:46 24 not -- if it's created, uh -- and then the signature would be  
10:00:51 25 in ink over a toner document.

10:00:54 1 So, I make the distinction between how the document  
10:00:58 2 was made. And that's why it's a document examination. I'm  
10:01:03 3 not just looking at the signature. I'm looking at the whole  
10:01:06 4 document and everything on it. Everything I can find on it.

10:01:09 5 And then what I do is I'll take the -- a microscope.  
10:01:14 6 And the one I have right down there is a specially designed  
10:01:19 7 stand for examining documents and it can take, uh -- reliably  
10:01:25 8 take pictures at 50 -- magnification is about 50 and also 200.  
10:01:37 9 And at 200, I'm able to see fine detail, which is required by  
10:01:43 10 the standard. The standard says you must be able to detect  
10:01:47 11 the fine detail within the document that you're looking at.  
10:01:51 12 And the fine detail includes the paper fibers and all of the  
10:01:55 13 little artifacts that go into the creation of the signature  
10:01:59 14 or the initial.

10:02:00 15 And you'll see in the actual report, you can  
10:02:03 16 actually see the results of that fine detail at 200  
10:02:07 17 magnification. The scanner won't go there. It doesn't go  
10:02:11 18 up that high.

10:02:12 19 So, it's a little bit like we're looking at things  
10:02:17 20 here, and then we get closer and closer, and higher and higher  
10:02:21 21 power magnification, and finally we see how it's made. And  
10:02:25 22 we can even see the structures within the signature itself.  
10:02:30 23 And then in this particular case, it's actually showing  
10:02:34 24 magenta structures within the blue ink signature, so.

10:02:41 25 And also the standard requires that you check for

10:02:48 1 inkjet satellites. It's right there in the standard. And,  
10:02:53 2 uh, those satellites can vary in size from one micron up to  
10:02:59 3 60 microns. And if you don't have sufficient magnification,  
10:03:03 4 you're not going to see the small ones. And the reason  
10:03:07 5 they're so tiny is the satellite droplets break off from the  
10:03:13 6 main droplet and they always have less volume of ink in them.

10:03:16 7 And between the generations of inkjet printers, the  
10:03:20 8 printer companies have now -- are now able to produce droplets  
10:03:25 9 that have one-half picoliter. That's where we're at right  
10:03:30 10 now. Eight years ago that might have been 5 picoliters  
10:03:34 11 because -- you know, the equipment is improving.

10:03:37 12 So I have to be able to see things that are almost,  
10:03:40 13 uh -- otherwise would be invisible, and may be invisible to a  
10:03:44 14 scanner depending on what age, what the age of the inkjet was,  
10:03:48 15 so -- what generation it came from. So --

10:03:53 16 THE COURT: I need to ask a question --

10:03:54 17 THE WITNESS: Yes.

10:03:55 18 THE COURT: -- so I understand your process,  
10:03:58 19 sir.

10:03:58 20 My understanding is you visually review the  
10:04:01 21 document. You scan it. And it's the scanned copy that  
10:04:05 22 you use to do your examination that you're describing, is  
10:04:08 23 that correct?

10:04:09 24 THE WITNESS: Yes. And I scan it at different  
10:04:12 25 levels of power.

10:04:13 1 THE COURT: But it's not the original document  
10:04:15 2 that you're using with your magnifier or your --

10:04:19 3 THE WITNESS: I'm scanning the original  
10:04:20 4 document.

10:04:20 5 THE COURT: -- your microscope?

10:04:21 6 No. But you're examining the scanned copy when  
10:04:24 7 you're using your microscope and these techniques, is that  
10:04:28 8 correct?

10:04:28 9 THE WITNESS: Uh-huh. Yeah. It's the same way  
10:04:30 10 you would do if you were examining bacteria. You aren't going  
10:04:34 11 to actually put your eye up to the bacteria.

10:04:34 12 BY MR. PANKOPF:

10:04:38 13 Q I don't think -- I don't think I understand that  
10:04:40 14 correctly. My understanding was that he was -- he actually  
10:04:42 15 uses the microscope during the examination, the physical  
10:04:45 16 examination of the documents to extract --

10:04:48 17 A Pictures.

10:04:49 18 Q -- pictures?

10:04:50 19 A Uh-huh.

10:04:51 20 MR. PANKOPF: So he's not -- so to clarify your  
10:04:54 21 question, I don't believe he was using the scans and using the  
10:04:57 22 microscope to magnify it even more. He actually magnified it  
10:05:01 23 from the documents that were presented at the examination.

10:05:07 24 Am I correct?

10:05:08 25 THE WITNESS: Yeah, I don't alter the images

10:05:10 1 that I take. These are photographs.

10:05:11 2 THE COURT: Okay. But, backup.

10:05:11 3 THE WITNESS: Yes.

10:05:12 4 THE COURT: So you review the documents and then  
10:05:14 5 you scan them, correct?

10:05:16 6 THE WITNESS: Uh-huh. Yeah.

10:05:17 7 THE COURT: And the scanned copy is what he then  
10:05:20 8 uses to conduct the analysis that he does, correct?

10:05:25 9 MR. PANKOPF: Well, that's correct, but there's  
10:05:27 10 another part to it.

10:05:28 11 THE COURT: Okay. Well, maybe if you could ask  
10:05:29 12 him that and clarify it, that would be very helpful.

10:05:32 13 Thank you.

10:05:33 14 MR. PANKOPF: Thank you, Your Honor.

10:05:33 15 BY MR. PANKOPF:

10:05:37 16 Q Is it not true that you used the microscope during the  
10:05:41 17 physical examination of the document?

10:05:42 18 A That's true.

10:05:43 19 Q Right. So when you scanned -- you scan the entire image  
10:05:47 20 of each of the pages of the documents, correct?

10:05:50 21 A Well, the microscope doesn't scan.

10:05:52 22 Q No, I understand. I'm asking about scanning. You scan  
10:05:55 23 the document, right?

10:05:56 24 A Yeah, but --

10:05:57 25 Q Each page?

10:05:58 1 A -- the scanner scans the document. Yes.

10:05:59 2 Q Right. And in addition to that, you took digital images  
10:06:03 3 of specific parts of the documents, correct?

10:06:05 4 A Yes.

10:06:06 5 Q During the examination itself.

10:06:08 6 A Yes. That's a separate act.

10:06:10 7 Q Right. You didn't scan the image and then print it out  
10:06:14 8 and then magnify that picture up from that?

10:06:17 9 A No. That's correct. Every, every photograph is a direct  
10:06:20 10 photograph of the original document.

10:06:22 11 Q Which you obtained at the time of your examination of the  
10:06:26 12 documents, correct?

10:06:27 13 A Yeah. They handed it to me and I -- you know, I am  
10:06:32 14 examining it, what they gave me.

10:06:34 15 Q Okay.

10:06:35 16 THE COURT: So the pictures that he takes are  
10:06:37 17 from the original documents?

10:06:38 18 MR. PANKOPF: That's my understanding, Your  
10:06:40 19 Honor.

10:06:40 20 Is that correct?

10:06:41 21 THE WITNESS: That's absolutely correct.

10:06:43 22 They're direct picture from the original document. They're  
10:06:46 23 not derivatives.

10:06:52 24 BY MR. PANKOPF:

10:06:52 25 Q Okay. So I think we understand that at the examination,

10:06:55 1 you took the time to scan each individual document, and then  
10:06:59 2 you, in some particular instances, you took microscopic  
10:07:06 3 pictures of certain parts of particular parts of the  
10:07:09 4 document's, correct?

10:07:10 5 A I always do both. I always take microscope pictures and  
10:07:14 6 scanner pictures because I never know where the features are  
10:07:17 7 going to appear. It's, you know --

10:07:19 8 Q Was there any other process or methodology that you used  
10:07:23 9 during the actual physical examination of those documents?

10:07:26 10 A Well, yeah, I'll use other methods when I think it's  
10:07:30 11 called for. For example, I had a case recently in Hawaii  
10:07:34 12 where I found out that the signature was made with magnetic  
10:07:38 13 ink, you know, and I -- there's no pen with magnetic ink, You  
10:07:43 14 know, so.

10:07:44 15 Q Well, how did you make a determination that it was  
10:07:47 16 magnetic ink?

10:07:48 17 A I had a little magnet and I took the paper and I hung it  
10:07:51 18 like this, and put it up next to the signature, and the paper  
10:07:55 19 stuck to it. It's ferromagnetic. Very simple test.

10:07:59 20 Q So what I was trying to get at with my previous question  
10:08:02 21 was did you implement any other methodologies or procedures  
10:08:07 22 that day, back in June, on June 8th?

10:08:09 23 A No. I didn't use that test that day because I didn't  
10:08:12 24 need to.

10:08:13 25 Q I know.



10:08:13 1 A Yeah.

10:08:14 2 Q I understand that. But what I'm asking you is was there  
10:08:17 3 anything else that you've already -- other than what you've  
10:08:19 4 already told us, that you implemented that day when you were  
10:08:23 5 examining the documents?

10:08:25 6 A Yes. I do have some infrared microscope photos of the  
10:08:31 7 ink, you know, the signatures and other, other artifacts on  
10:08:35 8 the documents.

10:08:36 9 Q On this particular -- these documents that we're talking  
10:08:41 10 about right now?

10:08:41 11 A Yeah. Yeah, I had like --

10:08:43 12 Q Okay.

10:08:43 13 A -- five or 600 photographs, and they're all directly made  
10:08:46 14 from the document itself. And they're time stamped, date  
10:08:51 15 stamped, and they can't be -- you know, they can't be altered  
10:08:51 16 so.

10:08:57 17 Q So what's the next step in the process after you gathered  
10:09:00 18 the digital data from the documents that you scanned?

10:09:02 19 A Well, I have to go home because I got 600 pictures to  
10:09:06 20 look at. And so I go down the pictures and I'm looking for  
10:09:09 21 the features that they talk about in the ASTM standard.

10:09:14 22 THE COURT: Okay. So now we're moving back to  
10:09:16 23 my question again.

10:09:17 24 So when he goes back -- and I'll direct this at  
10:09:21 25 you, sir. When you go back, when you're actually doing the

10:09:23 1 analysis, you're using the photographs that you took from the  
10:09:26 2 microscope.

10:09:27 3 THE WITNESS: Yeah, the direct photographs.

10:09:29 4 THE COURT: But it's the images that you're  
10:09:31 5 using at that point to come to your conclusions, is this  
10:09:35 6 correct?

10:09:35 7 THE WITNESS: Yeah. Because the human eye can't  
10:09:38 8 see, cannot see, uh, at the microscopic level. I mean, we're  
10:09:44 9 just not good at that sort of thing. So I have to take -- do  
10:09:48 10 what other scientists do and take photographs.

10:09:51 11 And that is exactly what is happening on Mars now  
10:09:54 12 is --

10:09:54 13 THE COURT: Okay. And appreciate that, sir, but  
10:09:56 14 we don't have a lot of time to get into the Mars rover.

10:09:59 15 So if you can just continue, sir.

10:10:02 16 BY MR. PANKOPF:

10:10:03 17 Q Dr. Kelley, would you turn your attention to Exhibit 5 in  
10:10:06 18 the witness book in front of you.

10:10:13 19 And Your Honor, this is document 218-8 that was  
10:10:19 20 attached to the Motion For Sanctions in support. And it's --  
10:10:25 21 you know, he can, Dr. Kelley can authenticate it, but it's  
10:10:29 22 his report, his expert opinion report.

10:10:32 23 THE COURT: Is there any objection?

10:10:33 24 MR. WILLIS: Yes, Your Honor. For the record,  
10:10:36 25 we object under 403 grounds. It's cumulative because the

10:10:40 1 good doctor is sitting on the stand. However, I anticipate  
10:10:43 2 the Court, having already reviewed it, will allow it in.

10:10:46 3 THE COURT: Okay. Thank you, sir.

10:10:48 4 And it will be admitted with the objections noted  
10:10:52 5 at this point.

10:10:53 6 (Whereupon, Exhibit 5 -- a document, was received in  
10:10:56 7 evidence.)

10:10:56 8 BY MR. PANKOPF:

10:10:57 9 Q Dr. Kelley, can you -- you're familiar with the -- your  
10:11:02 10 report, correct?

10:11:03 11 A Yes.

10:11:03 12 Q Can you walk us through, uh, the documents and the  
10:11:09 13 photographs and the conclusions that you have reached?

10:11:15 14 A Yes. Where do you want me to start? Uh --

10:11:20 15 Q Well --

10:11:20 16 A -- we've already discussed the examination.

10:11:23 17 Q I mean, the note --

10:11:27 18 A Of the examined documents?

10:11:29 19 Q Identifying the note, deed of trust --

10:11:29 20 A Okay.

10:11:32 21 Q -- and then the photographs of the exhibits that are  
10:11:34 22 attached in support of your conclusions.

10:11:37 23 A Uh-huh.

10:11:44 24 Oh. Okay. So on page 3, I'm looking at an image  
10:11:47 25 size anomalies where I measure the size of the images on the

10:11:51 1 paper and the paper itself.

10:11:53 2 Q I don't think we're with you on that.

10:11:55 3 If you look at the bottom of the page, it says  
10:11:58 4 Exhibit 5, and then it's got what we call a bates stamp  
10:12:01 5 number. You know, it's 1 through 32, I think, or 39 -- 1  
10:12:05 6 through 39. So when you're referencing a specific page  
10:12:09 7 number, let's reference those numbers so that we can all be  
10:12:13 8 on the same page. And --

10:12:19 9 A I'm sorry. I'm not quite getting you.

10:12:21 10 MR. PANKOPF: May I approach the witness?

10:12:22 11 THE COURT: Please, sir. Thank you.

10:12:24 12 MR. PANKOPF: Thank you.

10:12:24 13 When you look at the -- then on here --

10:12:24 14 THE WITNESS: Oh, that part. Okay. Use that  
10:12:24 15 as a reference.

10:12:43 16 Got it. Okay. Understood.

10:12:43 17 BY MR. PANKOPF:

10:12:44 18 Q All right. So you can tell us what page you're on.

10:12:46 19 A 5-003. Exhibit 5-003.

10:12:53 20 Okay. And so, here, we're looking at Exhibit A.  
10:12:57 21 And the first one is a promissory note. And these were actual  
10:13:04 22 measurements of the image size on the note. And I just do  
10:13:09 23 this as -- I usually do this to every, in every document exam  
10:13:15 24 to see if there's a, you know, if there are any anomalies in  
10:13:21 25 this. I don't consider this necessarily probative. But, it

10:13:24 1 is part of the indicative evidence. It's not probative, but  
10:13:27 2 it's, hey, what's going on here? Right?

10:13:30 3 Q Okay. So what is it?

10:13:31 4 A Well, it's just showing that there's an error in the  
10:13:34 5 length and the width of pages 1, 2, and 3, and that they  
10:13:41 6 aren't all the same size. You know, if you just look down at  
10:13:46 7 -- it's like error in width is .09 on page 1. Error in width  
10:13:52 8 on page 2 is .1, which is pretty close. I'd say that that's  
10:13:57 9 pretty close. On page 3, it's .07. And that is different.  
10:14:02 10 And then on page 4, there's no difference. It's exactly the  
10:14:06 11 right size.

10:14:08 12 So, it's showing that there's a variation in the  
10:14:11 13 width of the image on the paper, indicating that these -- this  
10:14:15 14 shouldn't -- it shouldn't be there, you know. It's indicating  
10:14:19 15 there's something -- it's an anomaly.

10:14:22 16 Q What do you mean? What is the anomaly?

10:14:24 17 A The anomaly is they're not all the same size image.

10:14:27 18 Q Well, what should the image size be?

10:14:30 19 A It should --

10:14:31 20 Q What should --

10:14:32 21 A They should be all zero zero. Okay? So there should be  
10:14:37 22 no error --

10:14:38 23 Q Okay.

10:14:39 24 A -- in the width and the length.

10:14:40 25 Q What I'm seeing here, you got right next to note, it says

10:14:43 1 "ideal size eight-and-a-half by 14," right?

10:14:46 2 A Uh-huh.

10:14:46 3 Q Then it says "actual size 8.37 by 13.84."

10:14:51 4 A That's correct. Yeah.

10:14:52 5 Q And so if, like you said, it's probative, but this is

10:14:58 6 indicative. It should be the ideal size rather than the

10:15:02 7 actual size.

10:15:03 8 A Yeah. Yeah.

10:15:04 9 Q Right?

10:15:04 10 A But I wouldn't simply base my opinion on that one result.

10:15:08 11 And that's what I mean by indicative.

10:15:10 12 Q And you did not, did you?

10:15:12 13 A I did not, no. I did -- I'm making an observation of  
10:15:17 14 an anomaly. And there's also errors in the length of the  
10:15:21 15 document.

10:15:22 16 Q Okay. So you were kind of walking us through this, so we  
10:15:33 17 go to the next page, Exhibit 5, 4.

10:15:36 18 A 5-004?

10:15:37 19 Q Yes.

10:15:38 20 A Okay. This is the deed of trust. And I made similar  
10:15:41 21 measurements here. And here, there -- none of them are zero.

10:15:46 22 You know, they all have a -- you know, the error width in  
10:15:53 23 page 1 is .09; on page 2 it's .03, which is pretty close to  
10:15:57 24 zero. And on page 3 it's .11, which is the greatest  
10:16:02 25 difference. And then page 4 is .10.

10:16:07 1 So, so most of them are clustering around .1 in  
10:16:13 2 error. Okay? And the width. But, one is almost zero.  
10:16:20 3 Again, kind of similar to the other things. And these are  
10:16:23 4 being made with the scanner grid, which is accurate to one  
10:16:30 5 part in twelve hundred. Okay?

10:16:33 6 Q Yeah.

10:16:33 7 A Of twelve hundredth of an inch.

10:16:37 8 So then we have a similar phenomena with the  
10:16:41 9 length, error in length -- oh, except we had a really  
10:16:46 10 extraordinary -- okay. In the one -- on page 3 is the maximum  
10:16:50 11 deviation in both width and length.

10:16:54 12 Q What do you mean on page 3? The maximum --

10:16:57 13 A Well, page 3 of this little chart.

10:16:59 14 Q Oh. I'm sorry. I was going back to page 3.

10:17:01 15 A Yeah. The error in the width is .11, which is the  
10:17:04 16 maximum error for the whole set of pages. And the --

10:17:07 17 THE COURT: In the interest of time, can we move  
10:17:09 18 to the next --

10:17:11 19 MR. PANKOPF: Yes.

10:17:12 20 THE WITNESS: Yeah.

10:17:13 21 Yeah. So these are indications that these are  
10:17:17 22 anomalies within the actual sizes of the --

10:17:17 23 BY MR. PANKOPF:

10:17:19 24 Q And did you find the same anomalies with the rider that  
10:17:22 25 was attached to the deed of trust, or similar anomalies?

10:17:27 1 A Yeah. There are anomalies here to, but they're  
10:17:31 2 compatible with each other. It's just two pages and they  
10:17:33 3 have about the same error.

10:17:35 4 Q All right. So let's move this along. We'll go to your  
10:17:39 5 first -- well, it's actually probably third Exhibit A-3, which  
10:17:47 6 is -- it's on page 521. You have it marked as the condominium  
10:17:58 7 rider.

10:17:59 8 I'm sorry, Your Honor. We'll move forward from  
10:18:02 9 that. We'll actually go to exhibit -- or page number 5-04,  
10:18:07 10 which is Exhibit B-1.

10:18:07 11 COURT REPORTER: B or D?

10:18:16 12 MR. PANKOPF: B, as in boy.

10:18:16 13 THE COURT: I'm sorry, sir. Could you repeat  
10:18:18 14 that? I'm --

10:18:19 15 MR. PANKOPF: It's exhibit B, as in boy, 1. And  
10:18:23 16 it's page -- or Exhibit 5, page 24.

10:18:27 17 THE COURT: Okay. Thank you, sir.

10:18:27 18 BY MR. PANKOPF:

10:18:37 19 Q Dr. Kelley, is this one of the images that you took?

10:18:40 20 A Referring to Exhibit 5-022?

10:18:43 21 Q 024.

10:18:44 22 A Oh. Two four. Okay.

10:18:47 23 Yes.

10:18:48 24 Q What is it an image of?

10:18:51 25 A Okay. Uh, here we extracted the, using the high



10:18:57 1 resolution scanner, an image of Robert A. Slovak's signature  
10:19:05 2 from the promissory note.

10:19:09 3 Q Okay. And what else can you tell us about it?

10:19:15 4 A Then we took -- I decided to take the numbers because  
10:19:19 5 they fit, they actually fit well within the focal area of  
10:19:23 6 the microscope. And, uh, which will -- we looked at. And  
10:19:30 7 then I blew this up. You can see it's about 4X, 4 or 5X,  
10:19:36 8 five times, in Adobe Photoshop. You know, I scale, I scaled  
10:19:42 9 the image, and then put it back here so I can look at,  
10:19:46 10 within the stroke, and see if there are any, in this case,  
10:19:50 11 discolorations within -- or other artifacts within the blue  
10:19:55 12 ink date.

10:19:58 13 Q Is this looking for discolorization, something that is in  
10:20:05 14 the standards that you follow?

10:20:07 15 A Sure. You're supposed -- you know, you're to record all  
10:20:10 16 of these observations. These are observations and they're  
10:20:14 17 being recorded.

10:20:15 18 Q And so is this indicative or probative of discoloration?

10:20:20 19 A Well, at this level, we're not done yet. What this is  
10:20:23 20 saying is you better look at this with a microscope and see  
10:20:27 21 what's really going on here. Where are these discolorations  
10:20:31 22 coming from?

10:20:31 23 And you can't see it with this level of a scan, so  
10:20:37 24 I have to -- then I go to the microscope to see what it looks  
10:20:42 25 like.

10:20:43 1 Q Okay. And did you do that in this case?

10:20:47 2 A Yes.

10:20:51 3 Q So --

10:20:52 4 A So it's the next page.

10:20:53 5 Q -- do you have -- the next page?

10:20:54 6 A Yeah, the next page is 5-025. And here, I put a bounding  
10:21:01 7 box around the, you know, the scan file, which was magnified  
10:21:08 8 five times, and then I take that and I further -- I can zero  
10:21:15 9 in on it with -- well, let's see, this one is -- yeah, I can  
10:21:21 10 zero in on it to reveal that there are magenta dome structures  
10:21:28 11 within signature. Okay?

10:21:30 12 So we're seeing blue ink and magenta within the  
10:21:34 13 signature. Magenta is red. Red, basically. And cyan is blue  
10:21:40 14 basically. It's a form of blue ink, so.

10:21:46 15 Q And that's, that's what you're seeing when you -- what  
10:21:50 16 part of the -- I guess the zero and zero two, you blew up the  
10:21:54 17 top half of it, is that correct?

10:21:56 18 A Yeah. These are actually scan files. This is not a,  
10:21:58 19 this is not a high res scan file in the bottom part of the  
10:22:04 20 zero two five. And that's showing the magenta ink.

10:22:12 21 Q So what does this tell you when you find, you know, what  
10:22:17 22 you're indicating here is 61 percent cyan, uh, and then, you  
10:22:23 23 know, 95 percent cyan, and 82 percent magenta --

10:22:27 24 A Uh-huh.

10:22:27 25 Q -- and then the cyan is the 50 percent and magenta is

10:22:32 1 79 percent within the body of this, uh, this zero, this  
10:22:39 2 number?

10:22:39 3 A Okay. Let me explain.

10:22:43 4 Inkjets and cyan ink can have a maximum, at each  
10:22:48 5 channel, the typical basic processing inks are cyan, magenta,  
10:22:54 6 yellow, and black. Each one can't be at 100 percent. That  
10:22:57 7 would be the maximum amount of ink the nozzle can emit. Okay?

10:23:02 8 And in inkjets, these nozzles are almost always,  
10:23:05 9 almost always separate nozzles. So there's a cyan cartridge,  
10:23:10 10 and that's hooked up to a cyan nozzle. There's a magenta  
10:23:15 11 cartridge hooked up to magenta print head, basically. And,  
10:23:22 12 there's a yellow hooked up to a yellow print head. And the  
10:23:26 13 ink isn't mixed at the print head. There's some exceptions to  
10:23:31 14 that, but this is usually true, especially in high quality  
10:23:35 15 printers. And then the black comes out of a different print  
10:23:39 16 head.

10:23:39 17 So we have -- and then the ink usually comes out in  
10:23:43 18 the order CYMK. So they spray down the cyan first. And then  
10:23:48 19 they spray down the magenta. And then they spray down the  
10:23:52 20 yellow. And then black, if there is any. Okay?

10:23:55 21 So, so when I'm looking at this -- so when you see  
10:24:00 22 61 up here, that's 61 percent. That's just 61 percent of the  
10:24:03 23 maximum amount of ink.

10:24:06 24 And this image didn't come out very well on this  
10:24:09 25 picture. It's correct on the, I think on the other stuff,

10:24:16 1 but, you know, this is Adobe, Adobe thing. You can fix that  
10:24:20 2 easily. But the -- uh, so I'm looking at the volume levels  
10:24:25 3 of ink. And what this says is that if I take -- if I have,  
10:24:31 4 like, 50 percent cyan and 50 percent magenta, relatively, it  
10:24:36 5 gives you a nice blue ink Okay? If it's properly mixed.  
10:24:41 6 And if it doesn't mix, which is frequently the case with  
10:24:47 7 inkjets, then on the paper, then you're going to get distinct  
10:24:52 8 color clusters.

10:24:53 9 So when these things exist, it indicates a  
10:25:01 10 four-process color being used. And, typically, pens do not  
10:25:05 11 have four process colors in them. They use premixed ink at  
10:25:10 12 the factory. So --

10:25:16 13 Q So --

10:25:16 14 A So there -- and when I see pure cyan ink within the  
10:25:20 15 thing --

10:25:20 16 THE COURT: I'm going to stop the witness. I  
10:25:22 17 think that we're going -- I would ask that you ask a question  
10:25:24 18 and then that you answer the question, as opposed to going on  
10:25:27 19 to long explanations because I think we're all getting a  
10:25:30 20 little lost.

10:25:31 21 So I'll ask you to ask the question again, which is  
10:25:34 22 what does this mean? And if we could get a more direct answer  
10:25:38 23 to that question because I still haven't heard that answer  
10:25:41 24 yet.

10:25:43 25 MR. PANKOPF: I think he was getting to it right

10:25:45 1 there.

10:25:45 2 THE COURT: Okay.

10:25:45 3 BY MR. PANKOPF:

10:25:45 4 Q So what does it mean when you make these observations?

10:25:49 5 A It's indicative of an inkjet printer. Inkjet printers  
10:25:55 6 use cyan, magenta, yellow and black ink, and times more, but  
10:26:02 7 to produce the -- whatever thing they're trying to print. All  
10:26:05 8 right? And if it's a signature, it's going to be mostly -- a  
10:26:09 9 blue ink signature is going to be mostly cyan and magenta. If  
10:26:16 10 I -- if I add, you know, if I add yellow to that, it'll make  
10:26:19 11 the signature darker.

10:26:22 12 Q What expertise do you have with inkjet printers?

10:26:26 13 A I've got 12 of them and I actually test these things.

10:26:30 14 Q How do you -- I mean, do have a working knowledge of how  
10:26:36 15 inkjet printers work?

10:26:37 16 A Yeah, I perform experiments to make sure that what I'm  
10:26:41 17 saying is correct. And so I have printers, inkjet printers  
10:26:45 18 with up to 10 different colors in them.

10:26:47 19 Q Are inkjet printers similar to computers in the sense  
10:26:50 20 that --

10:26:51 21 A Well, computers don't print anything, but they, uh, you  
10:26:54 22 know, they -- you know, the printers do what the computer  
10:26:57 23 tells them. Right? So I --

10:26:58 24 Q I'm -- I guess what I'm getting at is, you know, you  
10:27:01 25 design computer softwares and computers throughout your

10:27:05 1 career.

10:27:05 2 A Sure.

10:27:06 3 Q So did that experience give you experience with the  
10:27:12 4 machinations of an inkjet printer?

10:27:15 5 A Yeah. Yeah, I can go read their patents. I also do  
10:27:18 6 my own patents, so I can read all of their patents. And  
10:27:21 7 there's, like, hundreds of patents on inkjet printers, and  
10:27:25 8 they identify all the problems with the inkjet printers.  
10:27:29 9 That's a good place to go if you want to know what's wrong  
10:27:31 10 with them.

10:27:32 11 Q So when you were at the law office in Vegas, when you  
10:27:36 12 were visually examining the signature on the note, did you  
10:27:44 13 notice any of the anomalies you were looking for in terms of  
10:27:50 14 indentation or evidence of a ballpoint pen?

10:27:53 15 A Well, when I did check for indentations, I didn't find  
10:27:56 16 any that I could feel, you know, so -- or see.

10:28:06 17 Q And so what's your conclusion, or what was your  
10:28:08 18 conclusion on the note based on this evidence that you  
10:28:11 19 reviewed?

10:28:14 20 A Well, this strongly indicates inkjet, but I'm looking  
10:28:18 21 for something probative. Okay? And probative is satellites,  
10:28:23 22 inkjet satellites. When there's inkjet satellites, that's  
10:28:27 23 probative because ink -- you know, pens do not spray inkjet  
10:28:32 24 satellites all over paper. You know, they just come out of  
10:28:36 25 the ball. Right? And so when the satellites are present,

10:28:38 1 that's probative.

10:28:40 2 Q Okay. So let's look at the next page -- Exhibit 5,  
10:28:47 3 page 26.

10:28:47 4 A Uh-huh.

10:28:49 5 Q And what is that?

10:28:51 6 A Well, these are three different signatures of Robert  
10:29:00 7 Slovak, parts of the signatures. And you see, in some cases,  
10:29:04 8 they're getting bigger.

10:29:05 9 And I actually put this in here to show what happens  
10:29:09 10 when you begin to magnify these things. You see more and  
10:29:12 11 more and more of how the thing is constructed, which is, uh,  
10:29:19 12 interesting. Okay?

10:29:20 13 So, that's really why this is one is here. It's  
10:29:23 14 just showing the process of, you know, getting to the truth  
10:29:26 15 here, so.

10:29:27 16 Q So let's look at the next page, 5-27.

10:29:31 17 A Okay. So 5-27 is -- there's a bounding box around the E  
10:29:40 18 in Robert, and another bounding box around the little R in  
10:29:48 19 Robert.

10:29:49 20 And I'm expanding -- what I'm doing is I'm taking  
10:29:52 21 the microscope and I'm going in there and putting it over that  
10:29:55 22 and taking a picture. And the picture is pointed to by the  
10:29:59 23 arrow. Unfortunately, when this document was created, it  
10:30:03 24 dislocated the arrows a little bit. So the original document  
10:30:06 25 has the arrows in the right place, but the bottom line is

10:30:10 1 the picture on the bottom, on the right, is a very detailed  
10:30:14 2 picture made by that microscope on the table there, showing  
10:30:22 3 the fine detail of how the E in Robert is structured.

10:30:29 4 So, you see the texture and the colors and that.  
10:30:32 5 And moreover, you're beginning to see something else. You're  
10:30:36 6 seeing satellites, satellite ink droplets are inside this  
10:30:40 7 thing, and that's what those little arrows point to.

10:30:43 8 So this is the beginning -- so this is probative  
10:30:46 9 evidence and we can make it even more probative by further  
10:30:51 10 magnifying that so you can see those little droplets more  
10:30:55 11 clearly.

10:30:55 12 Q Where, where, is -- is there magenta in the E in Robert,  
10:31:01 13 within the body of --

10:31:03 14 A Yeah, well --

10:31:04 15 Q -- (unintelligible.)

10:31:04 16 A Yeah, the second bounding box on --

10:31:06 17 Q Yeah.

10:31:06 18 A -- the left side --

10:31:07 19 Q Yes.

10:31:08 20 A -- it points -- the arrow is supposed to point to the  
10:31:11 21 picture on the right, and that's the microscope picture. And  
10:31:15 22 in there you're seeing, again, the process colors that the  
10:31:18 23 scanner revealed. So the scanner is showing the processed  
10:31:22 24 colors, but this is showing them in more detail. And it's  
10:31:26 25 also showing the paper fibers, you know, how the ink has gone



10:31:30 1 into the paper fibers.

10:31:32 2 And it's revealing also, around this portion of the  
10:31:36 3 picture -- again, if you look very closely, you'll begin to  
10:31:39 4 see the tiny little satellite ink droplets. And those could  
10:31:44 5 not have been put there by a pen. It's just not possible,  
10:31:50 6 so -- and that's why they have satellite ink droplets in the  
10:31:57 7 standard. They want you to look for them.

10:32:00 8 Q So based on this piece of evidence in the satellite  
10:32:15 9 droplets that you observed, were you able to come to a  
10:32:18 10 conclusion as to whether this is an actual ballpoint pen  
10:32:23 11 signature or was it created by an inkjet printer?

10:32:28 12 A The deed of trust signature is created by an inkjet  
10:32:33 13 printer, clearly.

10:32:34 14 Q Go and turn to page, the next page 5-28.

10:32:43 15 A Okay.

10:32:44 16 Q What are we looking at here?

10:32:46 17 A Okay. So this is the signature -- on the left side is  
10:32:49 18 the signature of Robert Slovak -- A. Slovak --

10:32:53 19 Q Are you on the same page I am?

10:32:54 20 A I'm on 5-029.

10:32:57 21 Q Go to 5-08, please.

10:32:59 22 A Oh. Excuse me. Sorry.

10:33:01 23 I thought you were moving.

10:33:03 24 Okay. Got it.

10:33:04 25 Q What is this?

10:33:05 1 A Uh, these are the initials on the deed of trust, page 1,  
10:33:12 2 at the top; page 2 down below that; and page 3 down below  
10:33:18 3 page 2; and the final initial down there, I guess, page 4.  
10:33:24 4 Right?

10:33:26 5 Q Okay. So what's the significance of this information on  
10:33:29 6 this exhibit?

10:33:30 7 A Oh. I'm measuring the color of the ink. So this is a  
10:33:34 8 different type of measurement. So it turns out the scanner  
10:33:38 9 has 48-bit color. It has greater color capacity than the  
10:33:44 10 microscope. So each channel, 16 bits of color, it's red,  
10:33:50 11 green, and blue. That's what it measures.

10:33:53 12 Here, I put it into the lab color mode. And the  
10:33:57 13 reason we do that is that when we're making comparisons, all  
10:34:02 14 of the colors in the A and B channels. Right? And the system  
10:34:06 15 is setup so that a deviation of 1 is detectable by a human  
10:34:11 16 being eye, the human eye. Okay? And the L stands for  
10:34:14 17 illuminosity. That's the brightness of the light.

10:34:18 18 So if I turn the illuminosity up and down, as long  
10:34:22 19 as I don't turn it out, off, it won't affect the color  
10:34:26 20 measurement.

10:34:27 21 So when I'm making color measurements, I compare  
10:34:31 22 the A channels, A and B channels of one initial, to the A and  
10:34:37 23 B channels of another, and there's a simple formula. It's  
10:34:42 24 like the way you calculate the hypotenuse of a triangle. And  
10:34:47 25 if that -- if the thing coming out of the square root of A,

10:34:52 1 A-1 minus A-2, plus a square plus B-1, minus B-2 all squared,  
10:35:01 2 is less than 2.5, then it's considered color match. If it's  
10:35:12 3 greater than that, then it's considered a mismatch. And the  
10:35:15 4 bigger that number, the worse the mismatch.

10:35:18 5 So what we're looking at here is an A channel value  
10:35:23 6 of 24 on page 1, with an A channel value of 33 on page 2. So,  
10:35:30 7 the colors don't match. I mean, right away, they're not going  
10:35:34 8 to match, even if you don't look at, you know, the B channel.  
10:35:38 9 Right?

10:35:39 10 And then I go to page 3, and I look at that and I  
10:35:42 11 say, well, okay, so, on page 3, we see that page 3 is starting  
10:35:46 12 to, you know, it's more closely matching page 1, but it  
10:35:51 13 doesn't match page 2. That's an anomaly. I mean, if these  
10:35:55 14 things were all made with the same pen, the ink color should  
10:35:59 15 match.

10:36:00 16 And then finally we get to this final one, and it  
10:36:04 17 says 24 here, and 75, and this is a little odd because this  
10:36:12 18 is also a mismatch. It doesn't match anything. Because  
10:36:16 19 when you look at both the A and B channels, the difference is  
10:36:20 20 going to be a lot greater than 3, right? And it's not hugely  
10:36:26 21 greater than three, but it's greater than that.

10:36:28 22 So these things, essentially, don't match each  
10:36:32 23 other the way they should match. So -- and the measurement  
10:36:39 24 standards here is done by the color standards group, CIE. So  
10:36:44 25 I didn't make this stuff up, they did. You know, and this

10:36:48 1 is what they agreed on how you measure color. And this same  
10:36:53 2 standard is used when you go down to Orchard -- one of the  
10:36:57 3 hardware stores and try to match paint. So if you're trying  
10:37:00 4 to match paint colors, so when you go to paint your wall, you  
10:37:03 5 may get the same color. So they use this same formula of the  
10:37:07 6 L-A-B color mode.

10:37:07 7 THE COURT: Okay. I'm going to interject again.  
10:37:10 8 If we can get to the actual answer to the question at this  
10:37:12 9 point, and then we're going to take a break.

10:37:16 10 MR. PANKOPF: Okay.

10:37:17 11 BY MR. PANKOPF:

10:37:18 12 Q So what's the significance in terms of the probative or  
10:37:22 13 indicative value of the fact that the initials have -- are not  
10:37:27 14 matching?

10:37:27 15 A Well, I consider this a strong indication. I consider  
10:37:32 16 the inkjets probative. So what it means is that all the  
10:37:37 17 indications are pointing to it not being an original document.  
10:37:43 18 And the ink -- and the satellites are saying it's not original  
10:37:47 19 at all. Forget about it.

10:37:49 20 Q Okay.

10:37:49 21 A Okay?

10:37:50 22 And so everything is pointing in a same direction.  
10:37:52 23 I don't have indicators saying, oh, yeah, it could be  
10:37:58 24 original. They're all saying it's not. So everything --  
10:38:02 25 every one of these sets of measurements is all pointing in

10:38:05 1 the same direction. If I didn't have the satellites, I would  
10:38:08 2 have a bunch of indicators, and that would justify an opinion  
10:38:12 3 that it's more likely than not a -- not the original document.  
10:38:17 4 It's a copy.

10:38:19 5 MR. PANKOPF: Thank you, Dr. Kelley.

10:38:21 6 THE COURT: Okay. At this point, we're going  
10:38:23 7 to take a 10-minute break. Let's come back at ten to 11:00.  
10:38:27 8 I assume that you will go through the next few pages a bit  
10:38:32 9 quicker so that we can get to the cross-examination by defense  
10:38:35 10 counsel. I want to make sure that we have enough time. And  
10:38:39 11 we will go from there.

10:38:40 12 At this point, we'll be in recess.

10:38:43 13 Thank you.

10:38:43 14 (Recess taken.)

10:54:14 15 THE CLERK: In the matter of Robert A. Slovak  
10:54:17 16 versus Golf Course Villas, and others, court is again in  
10:54:22 17 session.

10:54:23 18 THE COURT: Thank you. Please be seated.

10:54:24 19 Before we get started, I want to go through a couple  
10:54:27 20 housekeeping matters. While we were on the break I have  
10:54:30 21 reviewed documents 241, 242, and 243. Starting with document  
10:54:35 22 241, which is the Motion to Exclude the Expert Testimony of  
10:54:39 23 the Defendant's Expert, I am going to overrule that motion --  
10:54:42 24 are deny that motion. Based upon what is listed in the  
10:54:45 25 information on this document, there was notice provided to

10:54:48 1 the plaintiff, I believe on November 21st, that this expert  
10:54:54 2 would be a rebuttal expert, and that Wells Fargo would be  
10:54:56 3 offering that rebuttal expert.

10:55:00 4 In all fairness to the parties, I think part of it  
10:55:02 5 is my own fault because I didn't set a schedule for when  
10:55:06 6 notification should have been made for particular witnesses,  
10:55:09 7 but by no means based on the transcript of our November 6th  
10:55:12 8 hearing, was there any preclusion of Wells Fargo from  
10:55:15 9 obtaining an expert or providing an expert, in particular a  
10:55:18 10 rebuttal expert, which is the way I see -- or at least I am  
10:55:23 11 interpreting the expert that Wells Fargo is going to be  
10:55:25 12 providing.

10:55:26 13 More importantly, as this is an evidentiary hearing  
10:55:28 14 for my purposes, to help me understand all of the issues and  
10:55:31 15 rule on this motion -- which I will say, and I'm not sure it's  
10:55:35 16 really been made clear. This is a very serious motion that's  
10:55:39 17 been made. This is a motion for sanctions not just against  
10:55:42 18 Wells Fargo, but against the law firm of Snell & Wilmer, and  
10:55:46 19 individual attorneys. And I take that very, very seriously,  
10:55:49 20 which is partly why I wanted to have an evidentiary hearing.  
10:55:53 21 And so I'm denying the motion on 241.

10:55:57 22 As we go to document number 242, I believe I ruled  
10:56:01 23 on that in open court, but I did want to make a record on  
10:56:04 24 that, specific to the document number.

10:56:06 25 And as we go to document number 243, which is

10:56:09 1 objections to specific declarations that were provided as  
10:56:12 2 part of the response to Wells Fargo, from Wells Fargo to  
10:56:15 3 the motion for sanctions, I'm going to overrule those  
10:56:19 4 objections as well.

10:56:19 5 At this time I'll going ahead and turn it over to  
10:56:23 6 Mr. Pankopf, if you would like to continue, sir.

10:56:25 7 MR. PANKOPF: Thank you, Your Honor.

10:56:25 8 MR. WILLIS: Your Honor, if I might just one  
10:56:27 9 point of clarification.

10:56:28 10 THE COURT: Please, sir.

10:56:29 11 MR. WILLIS: We progressed into the substance of  
10:56:32 12 Dr. Kelley's testimony.

10:56:33 13 THE COURT: Right.

10:56:34 14 MR. WILLIS: Moved beyond, basically, voir dire  
10:56:37 15 of qualifications. I just wanted to make sure that the Court  
10:56:41 16 was aware that we do not -- we do not believe we have waived  
10:56:44 17 our objection to his qualifications.

10:56:46 18 THE COURT: No. And I thank you for bringing  
10:56:48 19 that up and I should have made that clear at the beginning of  
10:56:50 20 the hearing. My intent was to allow the witnesses to testify  
10:56:53 21 entirely, without waiving any objection to their actual  
10:56:57 22 qualifications under Daubert or Rule 702. But, in order to  
10:57:03 23 get all of the testimony in, I wanted to go through  
10:57:05 24 everything.

10:57:05 25 And thank you, sir, for bringing that up.

10:57:08 1 Absolutely. You have every -- I mean, that is not waived, so  
10:57:12 2 we'll just go ahead and continue from here.

10:57:14 3 MR. WILLIS: Thank you, Your Honor.

10:57:16 4 **DIRECT EXAMINATION (resumed)**

10:57:18 5 BY MR. PANKOPF:

10:57:19 6 Q Dr. Kelley, can you please turn to Exhibit 5, page 29.

10:57:30 7 A Okay.

10:57:31 8 Q What's the purpose of this exhibit?

10:57:38 9 A Oh, yeah. The purpose of this exhibit is to indicate  
10:57:43 10 that there is overspray that can be seen near the signature.  
10:57:49 11 And that's stuff that is not on the stroke itself. And  
10:57:56 12 overspray is one of the features that is identified in the  
10:58:00 13 inkjets standard and it's caused by ink collecting on the  
10:58:07 14 print head and then falling off onto the paper later on.  
10:58:11 15 Right? Because the heads are very close to the paper. They  
10:58:14 16 don't make contact with it, but, you know, the air currents  
10:58:18 17 that blow them off and you get a spray effect. So, that's  
10:58:22 18 defined within the standards.

10:58:24 19 So, I'm looking for that here. And I found it.

10:58:29 20 Yeah.

10:58:29 21 Q Okay. Turn to the next page, please, Exhibit 5, page 30.

10:58:40 22 A Okay.

10:58:41 23 Q What are we looking at here?

10:58:43 24 A Uh, okay. So here we have a much -- 200 magnification  
10:58:51 25 level, picture of, I think the bounding box that was on the



10:58:57 1 previous page. And I'm looking now for the satellites. Okay?

10:59:03 2 And I'm finding them.

10:59:05 3 So the small arrows are pointing to these little  
10:59:08 4 tiny satellite ink droplets. And they're -- typically they  
10:59:13 5 fall separately, you know, they don't do the -- exactly the  
10:59:16 6 same thing as a spray. You know, what I mean?

10:59:19 7 So you can see them there. And they're various  
10:59:23 8 sizes, which is, uh -- you can see on the thing. But  
10:59:26 9 they're quite small because the stroke itself is only about  
10:59:30 10 400 microns. And these little dots are like down in the --  
10:59:34 11 you know, they're down around 6 to 10 or 20 microns. Some  
10:59:42 12 of them are 6 to 20 microns. I'm just estimating from the --  
10:59:47 13 relatively to the size of the pen -- yeah, the stroke there.

10:59:56 14 Q Can you look at the bottom of the page to give us more of  
11:00:01 15 a specific answer as to what we're looking at, please.

11:00:04 16 A Uh, 5 -- on page 5-30?

11:00:09 17 Q Yes.

11:00:10 18 A Okay.

11:00:11 19 What was the question?

11:00:13 20 Q Well, you said I think I'm looking at, you know, a  
11:00:16 21 signature, but where is the signature from?

11:00:18 22 A Oh. The signature is from the previous page, Robert  
11:00:22 23 Slovak.

11:00:23 24 Q What document is this signature from?

11:00:25 25 A Uh, I believe this is the, uh, the --

11:00:29 1 Q Take your time and read what you wrote.

11:00:31 2 A Yeah. Just a second. Let me check because this -- my  
11:00:35 3 document is not completely correct.

11:00:51 4 (Witness reviews document.)

11:00:52 5 This is the deed of trust. So, we're looking at a  
11:00:56 6 very tiny portion of a signature --

11:00:59 7 Q Well, wait just -- I don't mean to interrupt you.

11:01:01 8 Are you on the page -- exhibit 5, page 30?

11:01:03 9 A Yeah.

11:01:04 10 Q And do you see at the bottom where it says exhibit B-7?

11:01:07 11 A Oh. I'm sorry. Okay.

11:01:09 12 Yeah. My copy is really messed up.

11:01:12 13 Q Is it --

11:01:12 14 A It doesn't look like that on the screen.

11:01:14 15 Q Okay.

11:01:15 16 A So, you have to excuse me.

11:01:19 17 Okay. So B-7, the picture is okay thought, but the  
11:01:21 18 writing on the picture is not. Okay?

11:01:26 19 So B-7 is the rider. Okay? And so what it's  
11:01:31 20 showing is two things. One is the satellites, and also the  
11:01:35 21 presence of these magenta nodules within the stroke itself,  
11:01:42 22 which is similar to the deed of trust.

11:01:46 23 So, we have magenta and cyan dominated things. And  
11:01:51 24 if you notice, all the satellites are cyan. We don't have  
11:01:54 25 any magenta satellites, which is very -- you know, it's kind

11:01:58 1 of interesting. And they're actually, uh, if I measure the  
11:02:02 2 ink color of the actual satellite, they're cyan, just like  
11:02:07 3 they came out of the cyan cartridge.

11:02:10 4 Q Right.

11:02:11 5 A So, it's just a peculiarity of this particular inkjet.

11:02:16 6 Q So from this particular piece of evidence that you  
11:02:19 7 obtained, what conclusion can you draw from this regarding  
11:02:23 8 the signature on the rider?

11:02:26 9 A The satellites are probative. The existence of these  
11:02:30 10 little nodules within the things are strongly indicative.  
11:02:34 11 Okay? In other words, more likely than not. And then -- but  
11:02:38 12 the satellites are -- you just don't get satellites from pens.  
11:02:43 13 They -- you know, I've done the experiment with lots of pens,  
11:02:43 14 so.

11:02:47 15 Q So what -- can you be more explicit in what your  
11:02:51 16 conclusion is?

11:02:51 17 A Yeah. My conclusion is that the rider is not the  
11:02:54 18 original document. It's a copy.

11:02:59 19 Q That -- was it that the signature was created by an  
11:03:01 20 inkjet printer?

11:03:03 21 A Yeah. Yeah, we have two -- two -- uh, one very strong  
11:03:07 22 indicator. And the other is just probative evidence that it  
11:03:10 23 was, uh --

11:03:11 24 Q Okay. Please look at the next page --

11:03:13 25 A -- a copy.

11:03:14 1 Q -- which is page 31, Exhibit 5.

11:03:17 2 A Okay.

11:03:21 3 Q Take your time and read everything on the document.

11:03:23 4 A Okay. Yeah. Just give me a second because, again, the  
11:03:27 5 writing on the picture is, uh, not been made clear.

11:03:44 6 So this is B-8. So B is, again, the rider. It's an  
11:03:48 7 initial on the rider, according to my notes. And it's uh --  
11:03:52 8 and I'm blowing it up. I -- from the bounding box on the  
11:03:55 9 initials. So the other one was the signature. Now this is  
11:03:59 10 the initials, okay, that's on that document, the rider.  
11:04:05 11 And we're seeing that this also shows the same evidence.  
11:04:11 12 We're seeing satellite ink droplets and we're seeing, again,  
11:04:16 13 repeated initials, the magenta ink, within the stroke itself,  
11:04:23 14 the blue stroke.

11:04:28 15 Q So this is a magnification of the, the R initial?

11:04:33 16 A Yeah. There's a little red box around the R in -- on the  
11:04:40 17 left side.

11:04:40 18 Do you see the little red -- that's the bounding  
11:04:43 19 box.

11:04:43 20 Q Right?

11:04:43 21 A So the microscope took a picture of what's inside that  
11:04:47 22 box.

11:04:48 23 Q So you're seeing the cyan satellite droplets?

11:04:54 24 A Right.

11:04:54 25 Q And then the magenta?

11:04:56 1 A Uh, yeah.

11:04:58 2 Q Droplets within this, the initial itself?

11:05:02 3 A Yeah.

11:05:02 4 THE COURT: So I have a question, so let me  
11:05:04 5 just be clear for the record.

11:05:06 6 So the initials that are here that are listed on  
11:05:11 7 V-55, file number 340, that is the image that was taken by  
11:05:16 8 the microscope, is that correct?

11:05:18 9 THE WITNESS: The picture on the right side were  
11:05:20 10 taken by the microscope.

11:05:22 11 THE COURT: And then in your lab, you blew  
11:05:26 12 that up in that section, in that small square, and that's the  
11:05:29 13 pictures that we see on the right side, is that correct?

11:05:33 14 THE WITNESS: No. That's not correct. You  
11:05:35 15 got it out of order. The picture was taken during the  
11:05:42 16 examination.

11:05:42 17 THE COURT: Okay. Let me ask again.

11:05:44 18 THE WITNESS: It wasn't take afterwards at my  
11:05:46 19 house, so.

11:05:47 20 THE COURT: Okay. But my question is are the  
11:05:49 21 initials that are listed here, is that the photograph that was  
11:05:53 22 taken by the microscope of the original documents?

11:05:57 23 THE WITNESS: The one on the left side is a  
11:06:00 24 scanner.

11:06:00 25 THE COURT: Okay.

11:06:00 1 THE WITNESS: And the one on the right side is  
11:06:02 2 the microscopes, okay, two microscope photos. Two separate  
11:06:08 3 ones were taken of -- and you see me blowing up the bounding  
11:06:14 4 region within the right. There's another bounding box on the  
11:06:19 5 right side and I don't --

11:06:19 6 THE COURT: Sir, I'm going to interrupt you.  
11:06:21 7 I'm going to ask you just to stop right there. But, I  
11:06:24 8 understand what you're saying. I'm trying to clarify.

11:06:27 9 These photos on the right are different, in that  
11:06:31 10 they are separate images that we created by the microscope  
11:06:36 11 on, was it June 8th of 2018?

11:06:38 12 Am I following that correctly?

11:06:40 13 THE WITNESS: Yes.

11:06:40 14 THE COURT: Okay. Please continue, Mr. Pankopf.  
11:06:44 15 BY MR. PANKOPF:

11:06:46 16 Q So these observations that you've made with these  
11:06:50 17 photographs, have been magnified. What conclusions does it  
11:06:53 18 lead you to come to?

11:06:55 19 A The, uh, the rider is a copy. It's not the original  
11:07:01 20 rider.

11:07:08 21 Q So are there any other conclusions that you've reached  
11:07:13 22 regarding the deed of trust, the note, and the rider?

11:07:17 23 A I didn't reach any others. So I'm allowed, by the  
11:07:21 24 standards, to stop when I achieve -- you know, I've reached  
11:07:25 25 this level of evidence. I don't have to keep looking for

11:07:30 1 more things is all.

11:07:33 2 Q So just to recap, so you've come to the conclusion that  
11:07:37 3 the signature on the note is -- was created by an inkjet  
11:07:43 4 printer, is that correct?

11:07:45 5 A Yes.

11:07:45 6 Q And is that true as to the deed of trust?

11:07:48 7 A Yes.

11:07:49 8 Q And the rider that was attached to it?

11:07:51 9 A Yes.

11:07:55 10 MR. PANKOPF: Your Honor, I have no further  
11:07:57 11 questions at this time.

11:07:57 12 THE COURT: Thank you very much, sir.

11:07:59 13 At this time we'll allow the defense to  
11:08:01 14 cross-examine the witness.

11:08:03 15 MR. WILLIS: Thank you, Your Honor.

11:08:04 16 MR. PANKOPF: Excuse me just one second. I just  
11:08:32 17 wanted to double check. We moved that into evidence when we  
11:08:35 18 were -- the report and what not, right?

11:08:38 19 THE CLERK: Exhibit number 5.

11:08:39 20 MR. PANKOPF: Yes.

11:08:40 21 THE COURT: Yes.

11:08:41 22 THE CLERK: Yes.

11:08:42 23 MR. PANKOPF: Okay. Thank you.

11:08:42 24 \\\

11:08:43 25 \\\

**CROSS-EXAMINATION**

11:08:43 1

11:08:45 2

BY MR. WILLIS:

11:08:45 3

Q Good morning, doctor, how are you?

11:08:46 4

A Good morning. I'm fine.

11:08:48 5

Q Great.

11:08:49 6

May the witness be handed defense exhibits 1 and 2,

11:08:55 7

please.

11:08:55 8

THE CLERK: Yes.

11:08:58 9

THE WITNESS: Are we done with this one?

11:09:00 10

BY MR. WILLIS:

11:09:00 11

Q No. I would like you to turn to Exhibit 9.

11:09:04 12

THE WITNESS: Oh. Okay.

11:09:04 13

THE COURT: Just so I'm clear, these are

11:09:06 14

duplicates of what have been admitted already as plaintiff's

11:09:11 15

Exhibit 8 and 9, is that correct?

11:09:12 16

MR. WILLIS: I do not believe so, Your Honor.

11:09:14 17

But, let me check.

11:09:17 18

THE COURT: Oh. I'm sorry. You're right. I

11:09:19 19

apologize.

11:09:19 20

Go ahead. I just saw the top of the documents.

11:09:23 21

You're correct. They're not the same.

11:09:24 22

BY MR. WILLIS:

11:09:25 23

Q Before we get to 1 and 2, I would like you to turn to

11:09:28 24

Exhibit 9, which I believe you've described as the SWG doc, if

11:09:33 25

I could use the enunciated acronym. The SWG doc standard for



11:09:39 1 examination of documents produced with liquid inkjet  
11:09:41 2 technology.

11:09:42 3 Do you see that?

11:09:43 4 A Yes.

11:09:44 5 Q And if I understood your testimony correctly, you're  
11:09:46 6 contending that what you do is in conformity with this SWG  
11:09:50 7 doc, this standard, is that right?

11:09:52 8 A Yes.

11:09:53 9 Q So, doctor, uh, turn to paragraph 4.1 of Exhibit 9. And  
11:10:05 10 tell me if I read this correctly:

11:10:07 11 "The procedures outlined here are grounded in the  
11:10:10 12 generally accepted body of knowledge and experience in the  
11:10:13 13 field of forensic document examination. By following these  
11:10:18 14 procedures, a forensic document examiner can reliably reach  
11:10:22 15 an opinion concerning whether two or more documents produced  
11:10:26 16 with inkjet technology are from the same device, whether a  
11:10:30 17 particular device created the document, or the determination  
11:10:34 18 of the make or model of a device."

11:10:36 19 Did I read that correctly?

11:10:38 20 A Yes.

11:10:39 21 Q Now you're not doing any of those things, are you?

11:10:41 22 A Well, uh, I'm --

11:10:43 23 Q That's a yes or a no question, doctor?

11:10:46 24 A I'm not trying to identify --

11:10:47 25 Q Doctor, it's yes or no question.

11:10:48 1 A Well --

11:10:49 2 Q You're not doing any of those things, are you?

11:10:51 3 A No. No, I'm not doing that.

11:10:52 4 Q Okay.

11:10:52 5 A Okay.

11:10:53 6 Q Thank you.

11:10:53 7 Would you turn to exhibits 1 and 2, please.

11:11:06 8 That would be defense 1 and 2. They're -- I'm  
11:11:10 9 sorry. They're not -- they're what's on the counter in front  
11:11:13 10 of you, on the bar in front of you.

11:11:15 11 A Oh. Okay. All right.

11:11:18 12 Q Do you recognize Exhibit 1 as the SWG doc standard for  
11:11:23 13 minimum training requirements for forensic document examiners?

11:11:28 14 A Yes.

11:11:29 15 MR. WILLIS: Your Honor, we offer Exhibit 1,  
11:11:31 16 defense 1.

11:11:33 17 THE COURT: Any objection?

11:11:41 18 Any objection?

11:11:43 19 MR. PANKOPF: No objection.

11:11:44 20 THE COURT: Thank you.

11:11:45 21 It will be admitted.

11:11:46 22 (Whereupon, Exhibit 1 -- a document, was received in  
11:11:47 23 evidence.)

11:11:47 24 MR. WILLIS: Thank you.

25 ///

11:11:47 1 BY MR. WILLIS:

11:11:48 2 Q Exhibit 1, doctor.

11:11:49 3 Would you agree that the SWG doc standard for  
11:11:52 4 minimum training requirements requires the trainee to have  
11:11:56 5 24 months of supervised instruction?

11:12:02 6 A Well, yes, but --

11:12:03 7 Q Thank you.

11:12:04 8 You have not had 24 months of supervised  
11:12:07 9 instruction, have you?

11:12:07 10 A No.

11:12:08 11 Q Okay.

11:12:09 12 Would you look at Exhibit 2.

11:12:15 13 A Yes.

11:12:16 14 Q Do you recognize this as the ASTM standard guide for  
11:12:20 15 minimum training requirements for forensic document examiners?

11:12:23 16 A Uh-huh.

11:12:24 17 Q Do you recognize it?

11:12:25 18 A I recognize it as the standard guide.

11:12:28 19 Q Thank you.

11:12:29 20 MR. WILLIS: We offer Exhibit 2.

11:12:31 21 MR. PANKOPF: No objection.

11:12:32 22 THE COURT: Thank you.

11:12:32 23 That will be admitted, sir.

11:12:34 24 (Exhibit 2 received.)

25 ///

11:12:35 1 BY MR. WILLIS:

11:12:35 2 Q Would you agree with me, doctor, the standard guide,  
11:12:37 3 the ASTM is identical in its requirements for 24 months of  
11:12:43 4 continued -- or, excuse me, of continuous supervision for  
11:12:47 5 trainees?

11:12:47 6 A It is. But, it's only a guide. It's not actually a  
11:12:50 7 standard.

11:12:51 8 Q Well, I stand corrected there. But, the 24 months  
11:12:55 9 remains the same.

11:12:56 10 A Yes.

11:12:56 11 Q And you didn't have a guide or a standard that you  
11:13:01 12 followed because you didn't do 24 months of training,  
11:13:03 13 correct?

11:13:03 14 A Right.

11:13:04 15 Q Thank you.

11:13:04 16 A Uh-huh.

11:13:09 17 Q Would you turn to -- now this is back in the notebook.  
11:13:15 18 And I would like you to turn to Exhibit 7, which I believe  
11:13:32 19 was offered and received into evidence.

11:13:34 20 Do you have that in front of you, doctor?

11:13:36 21 THE COURT: I don't believe that's been  
11:13:37 22 admitted, sir.

11:13:37 23 MR. WILLIS: Oh.

11:13:38 24 THE COURT: But, I did overrule the objections  
11:13:40 25 that were filed at document number 243.

11:13:43 1 And as this was offered by plaintiffs counsel, does  
11:13:46 2 plaintiff have any objection to the admission -- oh. I'm  
11:13:49 3 sorry. This is a separate declaration. I don't believe  
11:13:52 4 this was actually admitted. This is Mr. -- Dr. Kelley's  
11:13:55 5 declaration.

11:13:56 6 Is there any objection to the admission of that?

11:13:58 7 MR. PANKOPF: No, Your Honor.

11:13:58 8 THE COURT: Thank you.

11:13:59 9 So that will be admitted, sir. I apologize.

11:13:59 10 (Whereupon, Exhibit 7 -- a document, was received in  
11:14:01 11 evidence.)

11:14:01 12 MR. WILLIS: Thank you.

11:14:01 13 If you would give me a moment, Your Honor.

11:14:07 14 BY MR. WILLIS:

11:14:08 15 Q Now, doctor, do you recognize Exhibit 7 as a document  
11:14:11 16 that you prepared on or about September 10th that was to be  
11:14:16 17 filed in this litigation?

11:14:17 18 A Yes.

11:14:18 19 Q And you understood that it was to be filed in this  
11:14:21 20 litigation in connection with this particular hearing?

11:14:26 21 A Well, they just asked me to prepare the declaration. I  
11:14:29 22 didn't get any more information.

11:14:31 23 Q Right. And you understood when you prepared this  
11:14:33 24 declaration, that your qualifications as a forensic document  
11:14:36 25 examiner were at issue.

11:14:38 1 You understood that, didn't you?

11:14:40 2 A I just responded. I just did what they wanted. I wasn't  
11:14:44 3 trying to analyze the case, okay, you know, okay, the  
11:14:46 4 litigation.

11:14:47 5 Q So is it your testimony that you don't believe your  
11:14:49 6 qualifications are at issue?

11:14:51 7 A No. I'm, I'm not saying that. I mean, uh, you know,  
11:14:55 8 I'm responding to -- I'm replying to things that, you know,  
11:15:00 9 the opposition was saying, right? So I mean --

11:15:03 10 Q Okay. You know your qualifications are at issue, yes or  
11:15:07 11 no?

11:15:07 12 A Yeah. Sure.

11:15:08 13 Q Thank you.

11:15:09 14 A Uh-huh.

11:15:09 15 Q And you realize that in connection with your questioned  
11:15:13 16 qualifications, your experience as an expert witness in other  
11:15:16 17 litigation would be relevant?

11:15:20 18 A Yeah. Sure.

11:15:21 19 Q Sure. Right?

11:15:22 20 A Right.

11:15:23 21 Q Would you look at paragraph 3.

11:15:30 22 Paragraph 3 of Exhibit 7 states -- tell me if I read  
11:15:34 23 it right --

11:15:34 24 A Uh-huh.

11:15:34 25 Q -- "only two of the many case" -- I assume cases -- "I

11:15:38 1 have provided my expert opinion have proceeded to trial where  
11:15:42 2 I testified as an expert witness. These were Penbroke versus  
11:15:45 3 U.S. Bank in Colorado, and Bank of New York versus Didrick  
11:15:51 4 (phonetic), in Collier County, Florida."

11:15:54 5 Do you see that?

11:15:55 6 A I wrote that.

11:15:56 7 Q Did ya?

11:15:57 8 A Yes.

11:15:57 9 Q It's not true, is it, doctor?

11:16:00 10 A It is true. You're wrong. I testified in the Penbroke  
11:16:06 11 trial. I was voir dired. And I testified at that trial.

11:16:09 12 Q And you were excluded?

11:16:10 13 A In Colorado.

11:16:11 14 Q And you were excluded as an expert, weren't you?

11:16:15 15 A Look, I testified at the trial. I don't know what  
11:16:18 16 happened after the trial or anything else. I have no  
11:16:21 17 information on that.

11:16:21 18 Q So you're unaware an order filed in the District Court,  
11:16:25 19 County of Jefferson, Golden, Colorado, on March 9, 2015,  
11:16:30 20 granting motion in limine to exclude opinion testimony of  
11:16:34 21 James Kelley, you're unaware of that?

11:16:36 22 A I'm totally unaware of it because I testified at the  
11:16:40 23 trial. I was there. I did it. I mean, there's no question  
11:16:43 24 about it.

11:16:44 25 Q Well, would you agree with me, sir, if the court granted

11:16:47 1 a motion in limine to exclude your opinion testimony, that  
11:16:51 2 whether you testified or not, your testimony wasn't accepted  
11:16:54 3 as that of an expert?

11:16:56 4 A The Court -- the judge didn't tell me my motion  
11:16:58 5 was excluded or anything else. He asked questions. He  
11:17:02 6 participated in the -- I mean, come on. I mean, you weren't  
11:17:05 7 there. I was. I testified in the Penbroke trial. So what  
11:17:10 8 you're saying is not true, in some respect, and I don't know  
11:17:13 9 why.

11:17:13 10 Q Well, sir, let me ask you this. Wouldn't you agree that  
11:17:16 11 what you're saying in paragraph 3 is disingenuous if you were  
11:17:20 12 excluded, by the granting of a motion in limine?

11:17:23 13 A I'm not going to do a legal opinion of something I don't  
11:17:26 14 know anything about. I'm completely unaware of any motion to  
11:17:30 15 exclude me. That would be -- the attorney managing the case  
11:17:33 16 would know about that. I wouldn't. I was on the stand. I  
11:17:35 17 was put on the stand. I was voir dired first, just like here  
11:17:40 18 today, and then I proceeded to testimony. They presented me  
11:17:42 19 with my report on a tablet. I went through the thing, uh, in  
11:17:47 20 court, and everyone was watching it, just like we're doing  
11:17:51 21 here today, and we completed the proceedings.

11:17:54 22 Now if something else happened, I don't know about  
11:17:57 23 it. Okay?

11:17:57 24 Q All right.

11:17:58 25 A I left Denver, went back to do my other work. Right? So



11:18:04 1 I'm completely unaware of what you're talking about.

11:18:06 2 Q Well, if you had been aware of that, you wouldn't have  
11:18:09 3 written paragraph 3 the way you wrote it, right?

11:18:11 4 A I testified at the trial.

11:18:13 5 Q All right. Fine.

11:18:14 6 Now you also, apparently, are unaware that your  
11:18:19 7 testimony was -- or a motion in limine to bar your testimony  
11:18:24 8 was granted in Naples, Collier County, Florida, on June 16,  
11:18:30 9 2014?

11:18:30 10 A I don't know what the judges are doing, but I was put on  
11:18:33 11 the stand by the judge. They had two expert witnesses there.  
11:18:36 12 One was the private detective and the other was myself, and  
11:18:40 13 they chose me and I testified as a proffer of testimony for --  
11:18:44 14 on appeal, okay?

11:18:46 15 Q Okay. So you were just unaware that your testimony was  
11:18:50 16 stricken?

11:18:50 17 A I don't, I don't write motions and I don't participate in  
11:18:54 18 motions to exclude ordinarily. I mean, I just don't know what  
11:18:57 19 they're doing. I just do what I'm asked to do.

11:19:00 20 Q Now you would agree that you have been excluded as an  
11:19:03 21 expert witness for lack of qualifications under Rule 702 on  
11:19:08 22 many occasions?

11:19:11 23 MR. PANKOPF: Objection --

11:19:12 24 THE WITNESS: You would have to be more  
11:19:14 25 specific.

11:19:14 1 MR. PANKOPF: Vague. Vague ambiguous as to  
11:19:16 2 "many objections."

11:19:17 3 THE COURT: Okay. First, when there's an  
11:19:19 4 objection pending, sir, I would ask that you not answer the  
11:19:22 5 question.

11:19:23 6 Secondly, I don't quite understand the objection on  
11:19:29 7 many basis. I don't know that that's a valid objection.

11:19:32 8 So, I'm going to ask that the question be reread so  
11:19:35 9 I can hear it again because everyone was talking over each  
11:19:38 10 other at that point.

11:19:38 11 Miss Clerk can you --

11:19:40 12 MR. WILLIS: I can rephrase.

11:19:42 13 THE COURT: Okay. Thank you, sir.

11:19:43 14 BY MR. WILLIS:

11:19:44 15 Q You are aware, are you not, doctor, that you have been  
11:19:47 16 rejected as an expert witness in more than one case?

11:19:51 17 A Yes.

11:19:52 18 Q In fact, you've been rejected as a witness in several  
11:19:55 19 cases?

11:19:57 20 A Yes.

11:19:58 21 Q And the two cases that you've avow to the Court you  
11:20:02 22 testified at trial, we have just learned your testimony was  
11:20:06 23 excluded, correct?

11:20:09 24 MR. PANKOPF: Objection. Calls for speculation.

11:20:11 25 THE WITNESS: I can't agree with something I

11:20:12 1 don't even know about. Okay?

11:20:14 2 THE COURT: Again, sir, when there's an  
11:20:16 3 objection pending, I would ask that you not answer the  
11:20:18 4 question --

11:20:19 5 THE WITNESS: Okay.

11:20:19 6 THE COURT: -- and talk over the attorney for  
11:20:21 7 the plaintiff or the defendant.

11:20:22 8 THE WITNESS: Sorry.

11:20:24 9 THE COURT: I'm sorry. Can you restate the  
11:20:26 10 question?

11:20:27 11 MR. WILLIS: I think my point is made, Your  
11:20:27 12 Honor.

11:20:29 13 THE COURT: Okay. Thank you, sir.

11:20:33 14 BY MR. WILLIS:

11:20:37 15 Q You, on your -- in your declaration, your September 11th  
11:20:41 16 declaration, 9-11 declaration, you list a number of cases in  
11:20:45 17 paragraph 4 where you say the cases were resulted in a  
11:20:51 18 resolution through either summary judgment and/or settlements.

11:20:54 19 Correct?

11:20:55 20 A Yes.

11:20:56 21 Q Now, in those cases, you never -- you did not testify in  
11:20:59 22 court, correct?

11:21:00 23 A No.

11:21:00 24 Q And as far as you know, your qualifications weren't  
11:21:04 25 challenged in these cases?

11:21:05 1 A I don't know. Uh, they do things differently in Hawaii.

11:21:10 2 A lot of these cases are Hawaiian cases.

11:21:14 3 Q But they were resolved without any necessity to call you  
11:21:17 4 to testify in court?

11:21:18 5 A Uh --

11:21:19 6 Q Correct?

11:21:19 7 A Yes. According to the lawyer, Gary Duben, he told me all  
11:21:26 8 these cases were -- uh, the report was accepted. Okay? So I  
11:21:31 9 got in information from the lawyer, so.

11:21:32 10 Q Now I want to change subjects just for a moment.

11:21:35 11 A Uh-huh.

11:21:35 12 Q I want you to tell me, in your own words, how would you  
11:21:38 13 describe your methodology?

11:21:40 14 A I follow the -- it depends on what I'm looking at, of  
11:21:49 15 course. But in this particular case, the inkjet methodology  
11:21:54 16 was being applied. Okay? I didn't need to use laser jet  
11:21:58 17 because the document wasn't made by a laser jet. Okay?

11:22:02 18 Q What -- I'm sorry. I guess my question wasn't clear.

11:22:05 19 What would you call your methodology?

11:22:07 20 A My methodology is a methodology of SWG docs and the ASTM,  
11:22:16 21 where they identify the things they're supposed to be looking  
11:22:19 22 at. The features --

11:22:20 23 Q Do you -- excuse me.

11:22:21 24 Do you regard yourself as a forensic document  
11:22:24 25 examiner?

11:22:25 1 A Yes. I examine the whole document. I'm not a  
11:22:28 2 handwriting analyst, per se, which is a different -- you know,  
11:22:32 3 it's a different type of thing.

11:22:34 4 Q Have you ever written anything, any articles, any paper,  
11:22:39 5 any treatise that relates to forensic document examination?

11:22:44 6 A Yeah. I'm actually writing an E book on --

11:22:47 7 Q I don't care what you're writing.

11:22:47 8 A Yeah. Okay.

11:22:49 9 Q Have you written anything?

11:22:51 10 A Well, I've written it. I haven't put it out there yet.  
11:22:54 11 Okay?

11:22:54 12 Q You know, you're right.

11:22:56 13 Have you published anything?

11:22:57 14 A Not yet. Okay.

11:22:58 15 Q Have you had any -- have you had that writing reviewed by  
11:23:03 16 a peer?

11:23:04 17 Do you understand what that means?

11:23:05 18 A My report has been peer reviewed.

11:23:08 19 Q By whom?

11:23:09 20 A Uh, in the MacDonald case in Washington State, my  
11:23:15 21 forensic report was reviewed by another forensic document  
11:23:21 22 examiner who agreed with my findings.

11:23:24 23 Q Who was that?

11:23:24 24 A I don't remember his name offhand, but we can certainly  
11:23:28 25 get that to you.

11:23:29 1 Q That wasn't your buddy, Mr. Michaels?

11:23:31 2 A No. He's not my buddy, incidentally.

11:23:35 3 Q So you had one report reviewed by another examiner. Have  
11:23:39 4 you had any writings at all reviewed by professional bodies  
11:23:43 5 that relate to document examination?

11:23:45 6 A Point of clarification. I'm not the one that had my  
11:23:48 7 report reviewed. That was done by the client's attorney in  
11:23:53 8 the MacDonald case.

11:23:54 9 Q Okay. Fine.

11:23:55 10 A Okay? And it was independently reviewed.

11:23:57 11 Q Have you had any scientific body review any report or  
11:24:06 12 treatise or paper that you prepared as part of a peer review  
11:24:12 13 process?

11:24:13 14 A Other than the one we just talked about, no. Okay.

11:24:18 15 Q Are you familiar with the term "error rate"?

11:24:21 16 A I am.

11:24:22 17 Q What's the error rate in your methodology?

11:24:26 18 A Well, that's like asking what is the error rate in the  
11:24:31 19 ASTM inkjet standard.

11:24:33 20 Q Right. The ASTM inkjet standard that is used to  
11:24:38 21 determine whether a document was prepared -- or whether two  
11:24:40 22 documents were prepared on the same machine. That standard  
11:24:43 23 we're talking about?

11:24:45 24 A Well, I want to make a point here, if I --

11:24:47 25 Q No. Answer my question.

11:24:48 1 A Well --

11:24:48 2 Q Is that the standard we're talking about?

11:24:50 3 A That's not what I'm talking about. That's what you're  
11:24:53 4 talking about. Okay. So maybe we're clear --

11:24:56 5 Q So you're not talking about the ATSM standard that we  
11:25:00 6 have introduced into evidence in this case.

11:25:02 7 A I'm talking --

11:25:03 8 Q We're talking about something else?

11:25:04 9 A I'm talking about the features identified in the ASTM  
11:25:10 10 inkjet standard.

11:25:11 11 Q On page 6 of your --

11:25:15 12 THE COURT: Can I ask a question? I still don't  
11:25:17 13 have an answer to the question of what is the error rate for  
11:25:20 14 your methodology, sir.

11:25:23 15 THE WITNESS: Well, uh, there's every -- there's  
11:25:28 16 no way of doing an error rate, in general, for that. Every  
11:25:37 17 document, you know, every document could be unique. But, you  
11:25:42 18 could create a standardized test and that hasn't been done.  
11:25:47 19 Okay?

11:25:47 20 THE COURT: And one other question, if I may.

11:25:49 21 You were asked about peer review as it related to  
11:25:55 22 specific reports or specific documents. The methodology that  
11:26:00 23 you're using appears to be somewhat different than what the  
11:26:05 24 standard says. And I think that was already pointed out,  
11:26:08 25 that the standard is determining what machine created a

11:26:12 1 document, or if two documents were created by the same  
11:26:16 2 machine.

11:26:16 3 So, has your methodology that you're using to work  
11:26:21 4 backwards ever been peer reviewed? To take a document and  
11:26:25 5 determine if it was created by an inkjet printer, has that  
11:26:30 6 methodology, used in that way, ever been peer reviewed?

11:26:34 7 THE WITNESS: I'm not aware of any report put  
11:26:40 8 out by that. However, there is university documents, like at  
11:26:46 9 Purdue forensic labs -- that's Department of Electrical  
11:26:52 10 Engineering at Purdue, that's a forensic document lab -- and  
11:26:54 11 they have, you know, identified these inkjet things. So, they  
11:26:57 12 have a 60-page report on it, so. But they don't -- aren't  
11:27:01 13 talking about error rates there. They're talking about the  
11:27:04 14 process of how the ink is created, how the satellites are  
11:27:09 15 created.

11:27:10 16 THE COURT: Okay. Thank you, sir. I'm just  
11:27:11 17 trying to just to clarify.

11:27:12 18 Please continue, Mr. Willis.

11:27:15 19 THE WITNESS: Yeah.

11:27:15 20 MR. WILLIS: Thank you.

11:27:16 21 BY MR. WILLIS:

11:27:17 22 Q Let's stay with Exhibit 7 for a bit.

11:27:19 23 Would you turn to page 7, colon, 03. So, the third  
11:27:23 24 page of your declaration.

11:27:24 25 A Okay.



11:27:24 1 Q You have --

11:27:26 2 A Uh-huh.

11:27:26 3 Q -- from lines 14 through 25, your, quote, research, end  
11:27:31 4 quote, regarding document examination.

11:27:33 5 A Uh-huh.

11:27:34 6 Q Now was any of this reduced to writing?

11:27:38 7 A Yeah, I have writing. And I haven't published everything  
11:27:41 8 yet, but it's going into the book.

11:27:43 9 Q Into the book that you're currently working on?

11:27:45 10 A Yeah. It's going to be an E book because -- you know, to  
11:27:48 11 avoid degradation due to printing.

11:27:51 12 Q So none of this research, though, you are not able to  
11:27:54 13 provide any of this research to us because you're still in the  
11:27:57 14 process of reducing it to writing, is that correct?

11:28:00 15 A Well, I've given the, uh, plaintiff's, I think, some of  
11:28:07 16 it for blue ink pens. These are actually pens. Real pens.  
11:28:13 17 So -- in other words, they become a reference standard.  
11:28:17 18 Right? And that research shows from the pens that there are  
11:28:21 19 no satellites created by pens.

11:28:26 20 Q While we're on that topic --

11:28:27 21 A Uh-huh.

11:28:28 22 Q -- are --

11:28:29 23 A Well, they have it. I gave it to them. I don't know  
11:28:32 24 what they're going to do with it, so.

11:28:34 25 Q Now the topic of ink and pens --

11:28:36 1 A Uh-huh.

11:28:37 2 Q -- it's true that cyan, which is blue, correct?

11:28:40 3 A Well, it's a form of blue. Yes.

11:28:42 4 Q Form of blue. And blue ink, sometimes has its hue  
11:28:48 5 intensified, or enhanced by adding a little cyan, correct?

11:28:53 6 A Well, I, I don't understand your question. You're asking  
11:28:56 7 me if you add cyan to cyan that you get a hue change?

11:29:01 8 Q I'm sorry. By adding magenta.

11:29:04 9 My error. I apologize?

11:29:04 10 A Well, if you put cyan and magenta together in, roughly,  
11:29:08 11 equal portions, it's just going to look like kind of a dark  
11:29:13 12 blue. Not a real dark blue, but a light dark blue.

11:29:15 13 Q Yeah. But if you put minimal amounts of magenta in the  
11:29:18 14 cyan, it's going to enhance the cyan color, correct, the hue?

11:29:21 15 A It will shift it a little bit more blue.

11:29:23 16 Q Okay.

11:29:24 17 A You know, a stronger blue.

11:29:25 18 Q Okay.

11:29:25 19 A A stronger blue.

11:29:26 20 Q And that occurs, does it not?

11:29:27 21 A It can. It can.

11:29:28 22 Q And while we're also on the topic of ink products, or  
11:29:32 23 ink-like products, you talked briefly about laser printing.

11:29:37 24 A Uh-huh.

11:29:37 25 Q Laser printing uses toner, correct?

11:29:40 1 A Yes.

11:29:41 2 Q And toner can either be black or it can be in color,  
11:29:44 3 correct?

11:29:45 4 A Yes.

11:29:45 5 Q Thank you.

11:29:47 6 Let's turn back to your report.

11:29:51 7 I'm looking at your training on page 7. There are  
11:29:55 8 10 or so things mentioned. None of them have to do with  
11:29:58 9 document examination, do they?

11:30:00 10 A I -- I'm sorry. I don't know what page you're looking  
11:30:04 11 at.

11:30:04 12 Q Page 4, Arabic 7. It's on line 1 of that page.

11:30:10 13 A Page -- go back. Could you give it to me by the bottom  
11:30:15 14 exhibit number?

11:30:16 15 Q Exhibit 7, page 004.

11:30:18 16 A Okay. I'm there.

11:30:20 17 Okay. Now what do you want me to look at?

11:30:23 18 Q Top of the page, lines 1 through 7.

11:30:25 19 A Uh-huh.

11:30:26 20 Q None of the training that you list in your report, or  
11:30:29 21 your declaration, relates to document, forensic document  
11:30:34 22 examination, right?

11:30:35 23 A That's not correct.

11:30:36 24 Q Okay. Which ones?

11:30:40 25 A Those are all relevant.

11:30:43 1 Uh, the use of photoscanners is image processing.

11:30:48 2 The use of microscopes is imaging processing. Uh, a light --

11:30:53 3 Q Excuse me, doctor. I'm talking about forensic document

11:30:58 4 examination.

11:30:58 5 A Well, forensic document examination uses image processing

11:31:03 6 to -- in order to capture the pictures of the documents.

11:31:07 7 Q And I --

11:31:08 8 A So you can see the fine detail.

11:31:10 9 Q All right. And I'm sure you'll tell me that the digital

11:31:15 10 phased array radar and electronic countermeasures also relates

11:31:20 11 to document examination?

11:31:21 12 A It created an image that was processed and displayed on

11:31:25 13 the computer of all the targets in the sky.

11:31:29 14 Q I'm not denigrating the significance of this. I mean,

11:31:33 15 certainly, that has some significance. It just has, really,

11:31:37 16 nothing to do with whether or not a signature is valid,

11:31:39 17 correct?

11:31:40 18 MR. PANKOPF: Objection. Argumentative.

11:31:43 19 THE COURT: I'm going to allow it.

11:31:44 20 But Mr. Willis, if you can --

11:31:46 21 MR. WILLIS: I'll move on, Your Honor. But, I

11:31:47 22 would like an answer to the question.

11:31:50 23 THE WITNESS: Could you rephrase it? I'm --

11:31:52 24 MR. WILLIS: No. I'm not even going to do that,

11:31:54 25 doctor.

11:31:54 1 THE WITNESS: Okay.

11:31:55 2 BY MR. WILLIS:

11:32:02 3 Q So, let's talk about what you did here. You came to my  
11:32:11 4 office and you spent, roughly, three hours looking at a HELOC,  
11:32:22 5 Home Equity Line of Credit Agreement, right?

11:32:25 6 A That was one of the documents.

11:32:27 7 Q A deed of trust?

11:32:28 8 A Yes.

11:32:28 9 Q And a rider?

11:32:30 10 A Yes.

11:32:30 11 Q And you were -- you described, I think, what you did with  
11:32:37 12 your microscope and your scanner at that time, correct?

11:32:40 13 A Yes. I took direct photographs of the original,  
11:32:47 14 purported original documents. Right.

11:32:48 15 Q And then you returned to your office, if you will, and  
11:32:51 16 then you did additional inquiry and determined that the  
11:32:58 17 initials and the signatures on those documents were placed  
11:33:03 18 there using an inkjet printer, is that correct?

11:33:07 19 A Yes.

11:33:08 20 Q Okay. Now, did you assume that the person, allegedly,  
11:33:15 21 doing this, had access to the original wet ink signature  
11:33:20 22 documents?

11:33:22 23 A I made no assumptions. I'm just looking at observations.  
11:33:28 24 All my conclusions are based on the data that I collected, not  
11:33:31 25 on any speculation about, you know, uh, who or what or, you

11:33:37 1 know, did anything. This is just science. Observation,  
11:33:41 2 recording, you know, explanation. That's it.

11:33:45 3 Q Okay. Well, let's walk through what had to happen.  
11:33:51 4 Let's assume you're right, that those signatures on these  
11:33:55 5 documents, the rider, the deed of trust, and the -- I'll call  
11:33:59 6 it the note, because I think you call it the note. The  
11:34:02 7 signature on those three documents were created post facto  
11:34:07 8 using an inkjet printer. Okay? That's basically what you're  
11:34:12 9 telling us here today.

11:34:13 10 Right? That's what you're telling us?

11:34:17 11 A Yeah. I'm saying they're copies.

11:34:19 12 Q Right. But did I get the rest right? They're copies  
11:34:25 13 made -- the signatures and the initials were placed on the  
11:34:29 14 paper of the copy by an inkjet printer?

11:34:36 15 A Not necessarily one inkjet printer, but an inkjet  
11:34:42 16 printer. Yes.

11:34:44 17 Q And the forms themselves, the forms of the HELOC and the  
11:34:47 18 deed of trust and the rider were created using laser printing,  
11:34:53 19 correct?

11:34:53 20 A False.

11:34:55 21 Q What?

11:34:55 22 A These documents are ink-based. In fact, the signature  
11:34:59 23 lines are made out of ink. They have, uh -- you can tell very  
11:35:03 24 easily by looking at the wick inks1.

11:35:09 25 COURT REPORTER: Looking at the what?

11:35:10 1 THE WITNESS: Oh. Feathering of ink, which it  
11:35:12 2 kind of climbs out and it looks like hair on the signature.

11:35:16 3 So if you blow that up, you can see the hair.

11:35:19 4 BY MR. WILLIS:

11:35:19 5 Q So are you testifying here today that the templates of  
11:35:24 6 these documents were not created using a laser printer?

11:35:27 7 A Well, I like to be very specific --

11:35:28 8 Q Me too.

11:35:29 9 A Okay. So the -- I was looking at this last night, in  
11:35:33 10 fact, again. The --

11:35:34 11 Q Well, answer my question, doctor.

11:35:36 12 Were the documents, the templates, were they created  
11:35:39 13 using a laser printer? Yes or no.

11:35:40 14 A The HELOC --

11:35:42 15 MR. PANKOPF: Objection. That's asked and  
11:35:44 16 answered. He already said no.

11:35:45 17 THE COURT: I don't think he has answered that,  
11:35:48 18 at least I haven't heard an answer yet.

11:35:50 19 THE WITNESS: The HELOC was not created with a  
11:35:53 20 laser printer.

11:35:54 21 BY MR. WILLIS:

11:35:54 22 Q And the others?

11:35:55 23 A The form was not created with a laser printer.

11:35:59 24 Q Okay. Well, I have to tell you maybe I didn't read your  
11:36:01 25 report carefully enough. I thought you said all the documents

11:36:03 1 were created with a laser printer.

11:36:05 2 Did I read that wrong?

11:36:06 3 A If that's in there, I don't recall that. But if it was  
11:36:09 4 in there, it's not. The, the HELOC was -- I'm speaking now  
11:36:14 5 specifically HELOC because I looked at it last night, and it  
11:36:18 6 was -- the signature line is ink. Okay? It's made with ink.  
11:36:25 7 It's not made by toner.

11:36:27 8 Q All right. How about the rest --

11:36:29 9 A Toner doesn't wick, feather.

11:36:32 10 Q And is the rest of the HELOC, in your opinion, created by  
11:36:35 11 a laser printer?

11:36:36 12 A Uh, I would have to check. But, basically, I checked the  
11:36:50 13 HELOC credit agreement last night when I was looking at the  
11:36:55 14 stuff.

11:36:55 15 I could actually pull it up on the screen if I  
11:36:58 16 needed to.

11:36:59 17 Q Sure. Simple question. Was the rest of the HELOC, the  
11:37:04 18 agreement, created by a laser printer?

11:37:07 19 A I was just looking at the signature line.

11:37:09 20 Q Okay. So if you said in your report, a month ago, that  
11:37:12 21 it was, then you probably would stand by that position,  
11:37:15 22 correct?

11:37:16 23 A Well, if the signature line was created by ink, it's more  
11:37:21 24 likely than not that the rest of the document was, okay?  
11:37:23 25 Yeah.



11:37:23 1 Q All right. We'll get back to that.

11:37:25 2 I want to though -- let's get back to what you say  
11:37:30 3 happened. And you are saying that somebody willfully created  
11:37:35 4 the document, a clever forgery, putting the signatures of  
11:37:41 5 Mr. Slovak and his initials on the documents using an inkjet  
11:37:47 6 printer?

11:37:47 7 MR. PANKOPF: Objection. Misstates his  
11:37:49 8 testimony.

11:37:49 9 THE COURT: I don't believe it does misstate the  
11:37:51 10 testimony. I think that's exactly why we're here.

11:37:54 11 So, please answer the question, sir.

11:37:56 12 THE WITNESS: Yeah, I'm saying that the, uh,  
11:37:58 13 signature and initials of Slovak were placed on those  
11:38:01 14 documents, yes, by an inkjet printer.

11:38:01 15 BY MR. WILLIS:

11:38:04 16 Q By an inkjet printer?

11:38:05 17 A Yes. More -- it could be more than one inkjet, but it's  
11:38:09 18 definitely an inkjet printer.

11:38:10 19 Q Okay. And you're also saying that the forms of the  
11:38:13 20 documents -- let's leave the HELOC aside for a moment -- the  
11:38:18 21 forms of the document, the templates, were created by using a  
11:38:21 22 laser printer, correct?

11:38:23 23 A I thought I already answered that. The signature line on  
11:38:26 24 the HELOC is not toner. It's ink. It's very easy to show  
11:38:33 25 that.

11:38:34 1 Q Doctor --

11:38:34 2 A I'm being very specific because I'm looking at specific  
11:38:38 3 features within a document. I'm not trying to  
11:38:41 4 over-generalize, you know.

11:38:42 5 Q Terrific. Terrific.

11:38:45 6 Here's, here's my question --

11:38:46 7 A Uh-huh.

11:38:47 8 Q -- set aside the HELOC. The deed of trust and the rider  
11:38:50 9 were created by using a laser printer?

11:38:53 10 A You're saying that?

11:38:55 11 Q I'm asking you to confirm it.

11:38:56 12 Is that true or not?

11:38:58 13 A Look, my memory is not that good, so I would have to look  
11:39:02 14 at the pictures again. But, I could answer the question by  
11:39:05 15 reference to the pictures themselves.

11:39:07 16 Q All right.

11:39:08 17 A They're very easy to tell the difference between a toner  
11:39:11 18 and ink. It's very easy. It's not a confusing subject.

11:39:16 19 Q Okay. So whether it's a laser printer or anything other  
11:39:19 20 than an inkjet printer, the template and the signatures were  
11:39:24 21 created by different methods.

11:39:26 22 Will you at least agree with that?

11:39:28 23 A I'm not sure what you're saying. I mean, what are you  
11:39:35 24 asking? Are you asking me -- what are you asking me to say  
11:39:38 25 here? I don't get.

11:39:40 1 Q Okay. Signatures created by inkjet printer, correct?

11:39:44 2 A Yeah.

11:39:45 3 Q Template created by --

11:39:45 4 A That's enough. I don't --

11:39:46 5 Q -- something --

11:39:47 6 THE COURT: Sir --

11:39:47 7 MR. WILLIS: -- template created by something  
11:39:49 8 else, correct?

11:39:49 9 THE COURT: Stop.

11:39:50 10 Again, you need to let him finish his question  
11:39:52 11 before you answer. So if you can maybe cut that down and be  
11:39:58 12 more specific.

11:39:59 13 And then answer his question directly, please, sir.

11:40:02 14 THE WITNESS: I'll try.

11:40:03 15 MR. WILLIS: Okay.

11:40:04 16 BY MR. WILLIS:

11:40:05 17 Q Is it your belief, doctor, that the inkjet signatures and  
11:40:09 18 initials were placed on the three documents after all of the  
11:40:16 19 other language was on those documents?

11:40:21 20 A I didn't -- I didn't have to analyze it in that fashion.  
11:40:26 21 All I had to do was determine if the signatures were placed on  
11:40:30 22 the document by an inkjet printer. So, I didn't have to ask  
11:40:33 23 the question that you're asking.

11:40:35 24 Q Okay.

11:40:35 25 A So --

11:40:36 1 Q My understanding is that you were provided with  
11:40:39 2 certain -- you were provided, by Mr. Slovak, with copies  
11:40:43 3 of these documents that he received at the closing of the  
11:40:46 4 loan in 2002?

11:40:49 5 A I, I have copies of the reference documents.

11:40:53 6 Q Yes.

11:40:53 7 A Yeah, I do.

11:40:54 8 Q And those copies show --

11:40:56 9 MR. PANKOPF: Objection. The question is beyond  
11:40:57 10 the scope of the direct examination.

11:41:00 11 THE COURT: I'm going to allow it.

11:41:02 12 Please.

11:41:03 13 BY MR. WILLIS:

11:41:03 14 Q And those copies -- it's interesting, Your Honor, because  
11:41:06 15 they're contained in their exhibit book by the way.

11:41:08 16 Those copies, those copies show that Mr. Slovak  
11:41:12 17 signed the deed of trust, the rider, and the HELOC, correct?

11:41:20 18 A I, I didn't really use the reference documents, so.

11:41:26 19 Q Did you look at them?

11:41:27 20 A And I believe you're correct.

11:41:29 21 Q Okay. I'm correct?

11:41:30 22 A But I can't say for sure because I didn't really use  
11:41:33 23 them.

11:41:33 24 Q Do you have any reason to believe that Mr. Slovak didn't  
11:41:36 25 sign the documents?

11:41:39 1 A No. That's not my job.

11:41:41 2 Q Do you have any reason to believe that Mr. Slovak didn't  
11:41:44 3 get the \$275,000 from Wells Fargo?

11:41:46 4 MR. PANKOPF: Objection. Relevance.

11:41:48 5 THE WITNESS: I didn't -- I wasn't looking --

11:41:50 6 MR. PANKOPF: Objection.

11:41:51 7 THE WITNESS: -- at money issues. I was only  
11:41:53 8 looking at the document.

11:41:54 9 THE COURT: Sir, stop.

11:41:55 10 Again, I am not going to say this again. When there  
11:41:58 11 is an objection, please don't speak.

11:42:01 12 THE WITNESS: Okay. I'll try.

11:42:01 13 THE COURT: And that goes for everybody. I'm  
11:42:04 14 going to sustain the objection because I don't think it really  
11:42:07 15 gets to where we're at here today.

11:42:09 16 So, please continue, sir.

11:42:12 17 MR. WILLIS: Thank you.

11:42:12 18 BY MR. WILLIS:

11:42:13 19 Q Do you have any reason to doubt that at one point in  
11:42:16 20 time, the original; that is, the wet ink signature documents,  
11:42:21 21 the rider, the HELOC, and the deed of trust, that those  
11:42:25 22 existed?

11:42:26 23 MR. PANKOPF: Objection. Speculation and  
11:42:28 24 relevance.

11:42:30 25 THE COURT: I don't think that there's anything

11:42:32 1 wrong with that question.

11:42:33 2 Please answer the question.

11:42:34 3 THE WITNESS: Well, uh, I assume that there was  
11:42:41 4 an original document at some point in time. Right. So --  
11:42:44 5 BY MR. WILLIS:

11:42:44 6 Q Okay. And then you've also assumed that at some point  
11:42:46 7 after the execution of the original document, somebody,  
11:42:49 8 somewhere, decided that they needed to create this forgery,  
11:42:55 9 correct?

11:42:55 10 A Yes.

11:42:56 11 Q Okay. And so to create the forgery, would they have  
11:43:00 12 needed, in your opinion, the original documents?

11:43:04 13 A No. They could have a digital image of it.

11:43:07 14 Q Okay. A digital image. So, they had to have, at least,  
11:43:12 15 a digital image --

11:43:14 16 A Yes.

11:43:14 17 Q -- of these documents.

11:43:15 18 And then, physically, how would this happen?

11:43:18 19 Would -- is it your opinion that the forms were then created  
11:43:22 20 using a laser printer or some other form of printing?

11:43:26 21 MR. PANKOPF: Objection. Speculation. And,  
11:43:28 22 foundation.

11:43:30 23 THE COURT: I'm going to overrule any objection.  
11:43:32 24 I thought that in his report he stated that the templates were  
11:43:35 25 created by a laser jet printer.

11:43:38 1 THE WITNESS: That's an, actually could be an  
11:43:40 2 error in my report because I looked at it last night and I  
11:43:43 3 noticed hair, what they call --

11:43:45 4 THE COURT: Okay. Sir --

11:43:45 5 THE WITNESS: Sorry.

11:43:46 6 THE COURT: -- there was a question pending, so  
11:43:48 7 I'm going to ask you to answer the question.

11:43:50 8 And Miss Court Reporter, can you repeat the question  
11:43:52 9 back.

11:44:08 10 (Record read.)

11:44:12 11 THE WITNESS: Well, yes, you would have to  
11:44:14 12 either have some off-the-shelf forms, or you would have to  
11:44:19 13 print them. Right? And then you would have to put the  
11:44:22 14 signature on them.

11:44:23 15 BY MR. WILLIS:

11:44:24 16 Q Yeah. Okay.

11:44:24 17 A Right.

11:44:25 18 Q So the first thing that this very clever forgerer would  
11:44:29 19 have to do would be to find the off-the-shelf forms, right?

11:44:32 20 A Yes.

11:44:32 21 Q And either create them or take them off a shelf, correct?

11:44:35 22 A Yes.

11:44:36 23 Q And then this person would have to find an inkjet printer  
11:44:40 24 and place those preprinted forms in the inkjet printer,  
11:44:44 25 setting up the paper in such a way that the blue ink only

11:44:48 1 comes out where the initials and the signature appear,  
11:44:54 2 correct?

11:44:55 3 A You mean placing the initials and signature in the right  
11:44:59 4 place in the document?

11:44:59 5 Q Right.

11:44:59 6 A Yeah. And that can be done. Yeah.

11:45:01 7 Q Okay. But, that's what they would have to do. They  
11:45:03 8 would have to first find the forms, and then they would have  
11:45:06 9 to go put the signatures on using the inkjet printer, right?

11:45:10 10 A Yes.

11:45:11 11 Q Okay.

11:45:11 12 MR. PANKOPF: Objection. It calls for -- I'm  
11:45:14 13 sorry. He already answered.

11:45:19 14 THE COURT: Thank you, sir.

11:45:22 15 BY MR. WILLIS:

11:45:23 16 Q Would you turn to your report, which I believe is  
11:45:30 17 Exhibit 5?

11:45:31 18 MR. PANKOPF: Five.

11:45:32 19 MR. WILLIS: Thank you.

11:45:34 20 BY MR. WILLIS:

11:45:40 21 Q Now, if I could direct your attention on to page 4 of  
11:45:44 22 Exhibit 5, at the top of the page.

11:45:50 23 Do you see that?

11:45:50 24 A Oh. Oh, I'm sorry. Excuse me. I was looking at the  
11:45:54 25 wrong one.



11:45:55 1 Q Actually, the bottom line on page 3. Forgive me.

11:45:59 2 Bu you say, and I quote: "The note table above  
11:46:03 3 shows that pages 1 through 3 are all about 1 percent smaller  
11:46:07 4 than they should be."

11:46:08 5 A Uh-huh.

11:46:09 6 Q "This indicates they are copies and not the original  
11:46:12 7 printed form."

11:46:14 8 Do you see that?

11:46:17 9 A Okay. I'm on page 3. Bottom?

11:46:19 10 Q Yes. Bottom of the page.

11:46:22 11 A Okay. Got it.

11:46:23 12 Q "The table shows that they're about 1 percent smaller  
11:46:26 13 than they should be. This indicates they are copies and not  
11:46:29 14 the original printed form."

11:46:30 15 Okay?

11:46:31 16 A Uh-huh.

11:46:31 17 Q "The signature page of note -- of page 2 -- the signature  
11:46:35 18 page of the note is page 2 and is therefore a copy. The last  
11:46:39 19 page, page 4, is, apparently, an original page from the  
11:46:44 20 promissory note form."

11:46:46 21 So you've concluded that this clever forgerer found  
11:46:51 22 one page of the form, but created the other three, correct?

11:46:55 23 A Not really. I'm just making observations about the  
11:46:59 24 size of the pages. I'm not trying to speculate on how this  
11:47:04 25 happened, which could have happened in many different ways. I

11:47:07 1 mean, there are many possible explanations for this. But,  
11:47:12 2 what's the anomaly is the fact that they don't agree in size.

11:47:16 3 Q Yes.

11:47:17 4 Now let's go back to the table again on the other  
11:47:21 5 page -- this is page 3 -- where you're talking about the page  
11:47:25 6 sizes.

11:47:26 7 Was this part of your report that you looked at last  
11:47:29 8 night?

11:47:31 9 A Yeah. I looked at it briefly.

11:47:33 10 Q You were concerned, weren't you, because you indicate in  
11:47:36 11 your report that there is a discrepancy between the sizes of  
11:47:40 12 the pages, that some are not eight-and-a-half by fourteen.  
11:47:44 13 They are eight-and-a-half by 13.8, et cetera, et cetera.

11:47:47 14 A Uh-huh.

11:47:48 15 Q You thought that was significant?

11:47:49 16 A It can be significant. Yeah.

11:47:51 17 Q And you're talking about the size of the paper, correct?

11:47:54 18 A Right.

11:47:54 19 Q Eight-and-a-half by fourteen inch paper, legal size paper  
11:47:59 20 we used to call it.

11:48:00 21 Do you remember that?

11:48:02 22 A Yeah, I know --

11:48:03 23 Q Okay. So what you're saying is that page 3 shrunk to  
11:48:11 24 8.43 times 13.8 versus the 8.5 times 14?

11:48:17 25 MR. PANKOPF: Objection. That misstates his

11:48:19 1 testimony. That's not what he said.

11:48:20 2 MR. WILLIS: Well, that's what the page says.

11:48:22 3 THE WITNESS: I just made a measure --

11:48:25 4 THE COURT: Whoa. Everybody stop.

11:48:28 5 Okay. What he's doing is simply reading from the  
11:48:31 6 table that's in your, in your witness' report and there is  
11:48:35 7 nothing impermissible about that, having already done that  
11:48:38 8 on direct.

11:48:39 9 So, please answer the question.

11:48:40 10 MR. PANKOPF: May I expound a little bit, Your  
11:48:42 11 Honor, please?

11:48:43 12 THE COURT: No.

11:48:44 13 Please answer the question, sir.

11:48:45 14 THE WITNESS: Okay. Could you repeat the  
11:48:47 15 question, please.

11:48:47 16 MR. WILLIS: Madam Court Reporter? Sorry to  
11:49:13 17 bother you.

11:49:13 18 (Record reread.)

11:49:16 19 BY MR. WILLIS:

11:49:16 20 Q That's what you're saying, correct?

11:49:18 21 A This is page 4, right?

11:49:25 22 Q No, it's page 3. Bottom of page 3.

11:49:29 23 A Okay. That's the problem I'm having. I'm on the wrong  
11:49:32 24 -- page 3. So page -- sir, try again.

11:49:36 25 Q Okay. I'm going to try again.

11:49:38 1 What you're saying on this table is that page 3 of  
11:49:40 2 the HELOC shrank from eight-and-a-half times fourteen, to 8.43  
11:49:46 3 times 13.8, correct?

11:49:47 4 A Yeah.

11:49:48 5 Q But, page 4 remained at eight-and-a-half by fourteen?

11:49:53 6 A Yes. That's what -- those are the measurements.

11:49:56 7 Q And then on the next page, you conclude page 4 is,  
11:49:59 8 apparently, an original page from the promissory note form  
11:50:02 9 because it hadn't shrunk, correct?

11:50:05 10 A Yeah. So I, I make that statement there.

11:50:12 11 Q Yeah. That's what you're opining. You're putting your  
11:50:16 12 alleged expertise behind that statement, correct?

11:50:20 13 A Well, I'm -- well --

11:50:22 14 Q Do you want to change it?

11:50:27 15 A Well, it actually should be rephrased. Could be an  
11:50:31 16 original page.

11:50:32 17 Q Okay. Could be?

11:50:33 18 A It could be something else too, right.

11:50:35 19 Q Okay. And as opposed to the other three pages, which  
11:50:38 20 because of the shrinkage, you opined couldn't be part of the  
11:50:41 21 original page -- or original document, correct?

11:50:44 22 A Yeah. Unless --

11:50:48 23 Q Okay.

11:50:48 24 A -- the original document itself was shrunk, you know,  
11:50:51 25 you know what I mean? So I'm just making measurements -- and

11:50:55 1 I don't want to go too far with this stuff. That's why it's  
11:50:59 2 an indicator. It's not probative.

11:51:01 3 Q Okay.

11:51:02 4 MR. WILLIS: Madam Clerk, could the witness  
11:51:04 5 please be provided with Exhibits 3, 4 and 5.

11:51:09 6 THE COURT: And that's defense exhibits?

11:51:11 7 MR. WILLIS: Defense Exhibits 3, 4 and 5. And  
11:51:14 8 at the same time, if possible, 3-A, 4-A and 5-A.

11:51:17 9 THE CLERK: I'll just give them all.

11:51:26 10 Some of the numbers are still on the back.

11:51:29 11 MR. WILLIS: Okay.

11:51:29 12 THE WITNESS: Do you still need the binder?

11:51:31 13 MR. WILLIS: Yeah. We're going to need it  
11:51:32 14 later, but you can put it down for a while.

11:51:35 15 MR. PANKOPF: I'm not sure we have 3, 4 and 5.

11:51:37 16 MR. WILLIS: You don't have 3, 4 and 5.

11:51:40 17 BY MR. WILLIS:

11:51:40 18 Q 3, 4 and 5 are the original note, deed of trust and  
11:51:44 19 rider. 3-A, 4-A, 5-A are copies of those documents that I  
11:51:48 20 personally made yesterday using a color scanner.

11:51:52 21 MR. PANKOPF: Objection. Assumes facts not  
11:51:54 22 in evidence.

11:51:55 23 MR. WILLIS: Well, I'm about to get -- sorry,  
11:51:57 24 Your Honor.

25 ///

11:52:05 1 BY MR. WILLIS:

11:52:05 2 Q So, doctor, do you recognize what you have in your  
11:52:07 3 hand --

11:52:07 4 THE COURT: I'm not -- wait. There's an  
11:52:08 5 objection pending.

11:52:10 6 So, you're objecting to him reviewing the documents  
11:52:12 7 because they have not been offered yet into evidence?

11:52:17 8 MR. PANKOPF: No.

11:52:18 9 THE COURT: Okay. So is that a withdrawn  
11:52:20 10 objection at this point then?

11:52:21 11 MR. PANKOPF: Yeah, it will be withdrawn.

11:52:22 12 THE COURT: Okay.

11:52:23 13 Please continue, sir.

11:52:24 14 BY MR. WILLIS:

11:52:24 15 Q Do you recognize -- which document do you have in your  
11:52:27 16 hand, doctor?

11:52:29 17 A This is the credit agreement.

11:52:30 18 Q Okay. You recognize that as the credit agreement you  
11:52:33 19 reviewed in my office on June 8th?

11:52:36 20 A It looks like it. I don't know if it's exactly the same  
11:52:39 21 one or not.

11:52:40 22 THE COURT: Sir, for my edification, what is  
11:52:43 23 that number because I don't have a copy of that in front of  
11:52:46 24 me. What is the exhibit number?

11:52:48 25 MR. WILLIS: I think --

11:52:49 1 THE CLERK: -- on the back?

11:52:50 2 MR. WILLIS: Is it 3-A or 3, Exhibit 3?

11:52:53 3 THE WITNESS: Exhibit 3 it's marked on here.

11:52:56 4 Defendant's Exhibit 3.

11:52:57 5 THE COURT: Thank you, sir. Appreciate that.

11:52:58 6 BY MR. WILLIS:

11:52:59 7 Q Would you confirm that Exhibit 3-A is a true and exact  
11:53:02 8 copy of Exhibit 3?

11:53:07 9 MR. PANKOPF: Can we have a copy of what he's  
11:53:09 10 looking at?

11:53:09 11 THE COURT: He's looking at what is purported to  
11:53:12 12 be the original and a copy that Mr. Willis made yesterday.

11:53:15 13 MR. PANKOPF: They don't have copies for us to  
11:53:18 14 look at.

11:53:18 15 MR. WILLIS: I gave them to you at break.

11:53:20 16 MR. PANKOPF: No you didn't.

11:53:21 17 MR. WILLIS: Sorry.

11:53:22 18 MR. JOHANNESSEN: No you didn't.

11:53:24 19 MR. WILLIS: Oh. Well, then I apologize.

11:53:27 20 MR. JOHANNESSEN: I have 3-A, 3-B, 3-C. You  
11:53:31 21 mentioned 4 and 5-A.

11:53:32 22 MR. WILLIS: My error.

11:53:34 23 THE COURT: Let's just stick with 3-A and -B  
11:53:36 24 and what we have right now, and we'll get to that maybe at the  
11:53:39 25 break. We can make copies at that point.

11:53:41 1 MR. WILLIS: Yeah. I should have copies. I  
11:53:43 2 apologize.

11:53:43 3 THE COURT: Okay.

11:53:43 4 BY MR. WILLIS:

11:53:44 5 Q What do you have in your hand, doctor?

11:53:46 6 A I've got two things -- I mean I've got Exhibit 3 and 3-A  
11:53:51 7 is lying in front of me.

11:53:52 8 Q Okay. Are they one -- are they copies? Are they the  
11:53:56 9 identical document?

11:53:57 10 A I don't know. I would have to examine them in detail,  
11:54:00 11 but they're copies. Yeah. I don't know if they're identical.

11:54:06 12 MR. WILLIS: Your Honor, may I approach for a  
11:54:07 13 moment just to sort out the exhibits.

11:54:09 14 THE COURT: Please, sir.

11:54:17 15 MR. WILLIS: Pardon me, doctor.

11:54:19 16 Do you have 3-A?

11:54:20 17 THE WITNESS: Yeah. This is 3-A.

11:54:51 18 MR. WILLIS: All right.

11:54:59 19 BY MR. WILLIS:

11:55:00 20 Q Now, you have in front of you exhibits -- you have copies  
11:55:03 21 of the HELOC, correct, Home Equity Line of Credit?

11:55:08 22 A Yeah, this is the HELOC.

11:55:10 23 Q One is marked Exhibit 3?

11:55:12 24 A Yes.

11:55:12 25 Q And one is marked Exhibit 3-A?



11:55:14 1 A Yes.

11:55:14 2 Q Okay. I asked you whether you recognized Exhibit 3 as  
11:55:17 3 the document you examined in my office and you said it looked  
11:55:21 4 like it.

11:55:21 5 A It looks like it, but I can't make sure it is the --  
11:55:24 6 exactly the same document without examining it.

11:55:26 7 Q But that is the document, that is a copy of the document  
11:55:29 8 that you examined and measured and created table 3 of your  
11:55:37 9 report around, correct?

11:55:38 10 MR. PANKOPF: Objection. Calls for speculation.  
11:55:40 11 He doesn't know if it's a copy of the original or a copy of a  
11:55:44 12 copy. I mean, it hasn't been established that this, this is  
11:55:48 13 the actual copy of the original that was examined.

11:55:50 14 THE COURT: Thank you, sir. I hear your  
11:55:52 15 objection. However, he asked him if this appears to be a  
11:55:55 16 copy of the document that he examined in his office, and  
11:55:58 17 that's a fair question.

11:55:59 18 MR. PANKOPF: He said a copy of the original.

11:56:03 19 THE COURT: A copy of the document that he  
11:56:04 20 reviewed at his office, which they purport to be original and  
11:56:08 21 you claim is not.

11:56:09 22 So, yes, please answer the question, sir.

11:56:11 23 THE WITNESS: Uh, okay.

11:56:15 24 So, uh, this appears to be, uh, either the original  
11:56:23 25 or a copy of the original I examined in the office. That's

11:56:26 1 all I can say at this point.

11:56:27 2 BY MR. WILLIS:

11:56:27 3 Q All right. That's fine.

11:56:27 4 A Okay?

11:56:28 5 Q And what was the exhibit number for the record?

11:56:30 6 A This is 3, yeah, that we -- I was referring to.

11:56:35 7 Q Okay. Thank you.

11:56:37 8 Would you hand Exhibit 3 to Her Honor, please.

11:56:40 9 THE COURT: Thank you, sir.

11:56:41 10 BY MR. WILLIS:

11:56:41 11 Q I would like you to look at the copy, Exhibit 3-A.

11:56:44 12 Do you have it there?

11:56:45 13 A Uh-huh. Yes.

11:56:46 14 Q Do you recognize that as copy of the Home Equity Line of  
11:56:49 15 Credit that you, as part of your assignment in this case,  
11:56:52 16 reviewed?

11:56:53 17 MR. PANKOPF: Objection. Your Honor, he's  
11:56:54 18 here to be voir dired, not to authenticate documents for  
11:56:59 19 defendants.

11:57:01 20 THE COURT: The witness is here to testify about  
11:57:02 21 the expert opinions that he's provided, including voir dire  
11:57:06 22 as to his qualifications. His expert opinion is based upon  
11:57:10 23 the review of documents in Mr. Willis' office that they  
11:57:14 24 purport to have been provided here today. He can absolutely  
11:57:18 25 answer questions related to those documents and those expert

11:57:21 1 opinions.

11:57:22 2 I find it very curious, however, that there was a  
11:57:25 3 document filed before this hearing -- let me pull it up --  
11:57:31 4 document number 237, which was a request for clarification,  
11:57:41 5 wherein the plaintiff's counsel indicated that documents  
11:57:45 6 needed to be provided at the hearing for their expert to be  
11:57:48 7 able to testify. And, these purport to be the very documents  
11:57:52 8 that were at issue. So, the objection is overruled. And any  
11:57:57 9 line of questioning -- anymore objections to these particular  
11:58:01 10 documents and whether or not this witness can testify to  
11:58:03 11 those documents are overruled.

11:58:05 12 We are now almost at noon. How much longer do you  
11:58:08 13 have, sir?

11:58:08 14 MR. WILLIS: I can wrap this up before noon,  
11:58:11 15 Your Honor, this last point.

11:58:12 16 THE COURT: Okay. Okay.

11:58:12 17 BY MR. WILLIS:

11:58:13 18 Q Okay. Still with me, doctor, on the HELOC?

11:58:15 19 A Okay.

11:58:16 20 Q The HELOC, we agree, is the document where you said  
11:58:19 21 page 3 had shrunk, page 4 had stayed at eight-and-a-half by  
11:58:23 22 14, correct?

11:58:24 23 A Yeah. That's what my measurements show.

11:58:26 24 Q Okay. Doctor, having that document in your hand, as  
11:58:30 25 you sit here today, would you agree that that is absolutely

11:58:33 1 impossible because it's a double-sided document on the same  
11:58:36 2 piece of paper? Page 3 and page 4 are on the same piece of  
11:58:40 3 paper.

11:58:47 4 A That would be correct.

11:58:49 5 MR. WILLIS: Nothing further. Thank you -- or  
11:58:50 6 I have, actually, further, Your Honor, but this is a good  
11:58:53 7 point to take a break.

11:58:55 8 THE COURT: Okay.

11:58:55 9 In light of how long this is taking, I'm going to go  
11:58:57 10 ahead and break, but we're going to come back at 1:00. I want  
11:59:02 11 to make sure we can get through all of this.

11:59:04 12 At this time, though, I would ask Mr. Willis -- and  
11:59:08 13 I'm sorry. Is it Ms. Dove?

11:59:10 14 MS. DOVE: It is. Thank you, Your Honor.

11:59:11 15 THE COURT: If you can make sure that  
11:59:13 16 plaintiff's counsel has copies of any additional documents  
11:59:15 17 that you plan to give. If you need copies made, please let  
11:59:19 18 me know and we can make those in chambers to ensure that  
11:59:22 19 everybody has copies of what you're looking at.

11:59:24 20 I am going to now hand back -- or do you have any  
11:59:28 21 other questions about what's been marked as document number 3,  
11:59:31 22 sir?

11:59:31 23 MR. WILLIS: I will, Your Honor. Yes.

11:59:32 24 THE COURT: I'm still going to hand that back to  
11:59:34 25 the clerk so I don't lose it.

11:59:35 1 So, Miss Clerk, here is document number 3. And when  
11:59:37 2 we get back to that, I'll request it back.

11:59:40 3 Like I said, we'll be back here at one o'clock to  
11:59:42 4 resume questioning. And at this time, we will be in recess.

11:59:46 5 (Noon recess taken.)

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12:59:53 1 Reno, Nevada, Wednesday, November 28, 2018, 1:00 p.m.

01:00:01 2 ---OoO---

01:02:18 3

01:07:13 4 THE CLERK: In the matter Robert A. Slovak  
01:07:15 5 versus Golf Course Villas Homeowners Association, court is  
01:07:17 6 again in session.

01:07:19 7 THE COURT: Good afternoon. Please be seated.

01:07:21 8 MR. JOHANNESSEN: Good afternoon.

01:07:22 9 THE COURT: Before we get started, I want to  
01:07:24 10 make a record because I am going to, not necessarily reverse  
01:07:28 11 a decision that I made earlier, but I want to make a  
01:07:31 12 clarification to a ruling that I made earlier.

01:07:33 13 Defense has offered as exhibits, Exhibit 3,  
01:07:37 14 Exhibit 3-A; Exhibit 4, Exhibit 4-A; and Exhibit 5 and  
01:07:42 15 Exhibit 5-A. Exhibits 3, 4, and 5 purport to be the documents  
01:07:48 16 that Mr. -- or Dr. Kelley -- I apologize -- reviewed when he  
01:07:52 17 was at the Snell & Wilmer offices in June of 2018. And, 3-A,  
01:07:58 18 4-A and 5-A purport to be copies made of those documents in  
01:08:03 19 anticipation of this hearing today. At this point, however,  
01:08:06 20 there has been no evidence, necessarily, to show that these  
01:08:09 21 are, in fact, the documents that Dr. Kelley reviewed; rather,  
01:08:14 22 he had indicated that they appear to be.

01:08:17 23 So, under Rule 104, under the Federal Rules of  
01:08:21 24 Evidence, I am making the ruling that, preliminarily, we will  
01:08:24 25 allow these to be testified to, and that they will be allowed

01:08:27 1 to be examined and gone over; however, I am not going to admit  
01:08:31 2 these documents into evidence until there is testimony to show  
01:08:35 3 the chain of custody that these are, in fact, those documents,  
01:08:38 4 if that is the purpose that they're being offered for.  
01:08:41 5 However, I think it's fair to allow him to testify that  
01:08:44 6 they appear to be the same document, however the weight  
01:08:47 7 and credibility as to the testimony related to those will be  
01:08:50 8 specific to whether or not that can be tied up. So I'm not  
01:08:54 9 sure how defense intends to do that, but there does need to be  
01:08:57 10 some showing that these are, in fact, the same documents that  
01:09:00 11 he reviewed.

01:09:01 12 I would also point out for the record that I  
01:09:03 13 understand it's Wells Fargo's position that these are the  
01:09:05 14 original documents. And, of course, it's plaintiff's position  
01:09:08 15 that these are forgeries. So to the extent that we say  
01:09:11 16 these are originals, we say that with that clarification,  
01:09:13 17 that I understand that there is a dispute between the parties  
01:09:16 18 as to their original nature. So if I use that term, or  
01:09:19 19 that terminology gets used by anybody in the courtroom, I  
01:09:22 20 understand what is being said by that. But, we're not  
01:09:25 21 necessarily making an assumption that these are, in fact,  
01:09:27 22 the originals because that is exactly why we're here today.

01:09:31 23 So with that clarification, and with that  
01:09:33 24 information, we'll go ahead and get started.

01:09:36 25 One thing I also wanted to point out of the record,

01:09:40 1 I do not have a criminal hearings today. As it turns out,  
01:09:42 2 there are no arrests. So, we can go forward and use as much  
01:09:45 3 time as we need to today. I will say this, my initial intent  
01:09:49 4 was to only allow one day of testimony and one day of this  
01:09:52 5 hearing. However, I will reserve judgment on whether or not  
01:09:54 6 I'm going to stand by that as we get closer to the end of the  
01:09:56 7 day.

01:09:57 8 I want to make clear on the record how serious I  
01:10:00 9 find this motion. I think that it has incredible impact on,  
01:10:03 10 especially, the individual attorneys of the law firm that have  
01:10:05 11 been alleged to have committed materially false information  
01:10:09 12 that has been presented to the Court and, because of that, I  
01:10:11 13 want to make sure that we're doing everything that we can to  
01:10:13 14 make a very good and very thorough record on these allegations  
01:10:18 15 because I think that is incredibly important to do, given the  
01:10:21 16 seriousness of the allegations that have been made.

01:10:23 17 So with that, Mr. Willis, we'll go ahead and  
01:10:26 18 continue with your cross-examination, sir.

01:10:27 19 MR. WILLIS: Thank you.

01:10:33 20 THE COURT: And I should state for the record,  
01:10:34 21 to the extent that Mr. Pankopf and Mr. Johannessen have  
01:10:37 22 continuing objections to Exhibits 3, 4 and 5 and 3-A, 4-A  
01:10:42 23 and 4-A sic.), those are noted for the record and will be  
01:10:45 24 considered without having to renew those objections on a  
01:10:48 25 regular basis.



01:10:49 1 MR. JOHANNESSEN: Thank you, Your Honor.

01:10:50 2 MR. PANKOPF: Thank you.

01:10:51 3 **CROSS-EXAMINATION (resumed)**

01:10:56 4 BY MR. WILLIS:

01:10:56 5 Q Good afternoon, doctor.

01:10:57 6 A Good afternoon.

01:10:59 7 Q Do you have before you exhibits 3, 4 and 5? If you  
01:11:04 8 don't, may we get them to you.

01:11:06 9 A I do not have 3. I have 3-A.

01:11:09 10 THE CLERK: Judge has 3.

01:11:10 11 THE COURT: I have 3. Do you need him to have  
01:11:12 12 that back?

01:11:12 13 MR. WILLIS: If you wouldn't mind, Your Honor.  
01:11:14 14 3, 4 and 5 I would like in front of the witness.

01:11:19 15 THE WITNESS: I believe I have -- this doesn't  
01:11:22 16 have a -- oh. There it is. 4, okay.

01:11:25 17 So, I've got 4, 4-A, and 5-A. And -- I don't know  
01:11:33 18 if I have 5.

01:11:34 19 Yeah, I got 5. Okay.

01:11:36 20 MR. WILLIS: Okay. Excellent. And 5 is the one  
01:11:38 21 I'd like to talk to you about, so if you would grab that, I'd  
01:11:41 22 appreciate it.

01:11:53 23 THE WITNESS: It is the condominium rider.

01:11:56 24 MR. WILLIS: That's correct, the condominium  
01:11:58 25 rider.

01:11:58 1 BY MR. WILLIS:

01:12:00 2 Q Now, Dr. Kelley, if I understood you correctly this  
01:12:03 3 morning, when you began to discharge your assignment, you  
01:12:09 4 physically inspected the three documents that were provided  
01:12:14 5 to you at our office, correct?

01:12:16 6 A Yes.

01:12:17 7 Q And you physically inspected them, if I understood you,  
01:12:21 8 again, for the purpose of determining whether there were any  
01:12:25 9 indentations or furrows that were related to the signatures?

01:12:30 10 A That's one of the tests that I look at. Yeah.

01:12:32 11 Q Okay. And I believe you testified that you didn't find  
01:12:36 12 any?

01:12:37 13 A No.

01:12:38 14 Q Is that correct, you did not find any?

01:12:40 15 A At the time.

01:12:42 16 Q Now looking at page -- or looking at Exhibit 5, which is  
01:12:46 17 the condominium rider --

01:12:48 18 A Uh-huh.

01:12:49 19 Q -- at the top of the first page, there is a bar code?

01:12:52 20 A Yes.

01:12:53 21 Q Would you rub your finger across that and tell me whether  
01:12:57 22 or not you believe that is a bar code that was affixed to the  
01:13:00 23 document in your hand, as opposed to part of a copy?

01:13:08 24 A I -- I'm not sure what you're asking me here. I'm a  
01:13:12 25 little bit baffled.

01:13:13 1 Q See the bar code?

01:13:14 2 A Yes. I see the bar code.

01:13:16 3 Q Rub your finger over it to see if there's a ridge.

01:13:20 4 A Uh, what are you asking me to feel? The bar code?

01:13:23 5 Q Yes.

01:13:23 6 A You can't feel it because it's ink, you know. Do you  
01:13:29 7 want me to feel the edge of it?

01:13:30 8 Q Yes.

01:13:31 9 A Okay. There's two-bar codes there.

01:13:33 10 Q Thank you.

01:13:34 11 Right. I was asking about the one on the top of  
01:13:36 12 page 1.

01:13:37 13 A Okay.

01:13:38 14 Q Is there a bar code that appears to be affixed to this  
01:13:43 15 document?

01:13:43 16 A Yes.

01:13:44 17 Q And turning to page 2. Is there a bar code that appears  
01:13:49 18 to be affixed to the document?

01:13:50 19 A No.

01:13:53 20 Q Bottom of page 3, at the bomb bottom, there's a different  
01:13:57 21 one, different kind?

01:13:58 22 A Yeah.

01:13:58 23 Q Would you do the same procedure with that bar code to  
01:14:01 24 determine if there's a ridge.

01:14:03 25 A Well, I, I -- that's not my procedure. I don't feel bar

01:14:07 1 codes. I look at them. Right?

01:14:11 2 Okay. Does that help?

01:14:12 3 Q Let me ask it this way. Doctor, you agree bar codes on  
01:14:18 4 Exhibit 5 are not part of the original document?

01:14:20 5 A The bar codes here were put onto this document.  
01:14:24 6 That's --

01:14:24 7 Q Thank you. Thank you.

01:14:26 8 Now in your investigation, and in your scientific  
01:14:31 9 research, did you reach any conclusions as to how the clever  
01:14:35 10 forgerer could put the bar codes on Exhibit 5?

01:14:38 11 A The same way you would put a bar code on any document.

01:14:45 12 Q Okay. So as part of the process -- using your  
01:14:48 13 hypothesis -- our forgerer not only created the document  
01:14:53 14 using laser printing, placed the signatures on the document  
01:14:59 15 with an inkjet printer, and then also managed to find bar  
01:15:04 16 codes to affix to the document that would be the equivalent  
01:15:08 17 of the bar codes that were on the original, is that right?

01:15:11 18 A Well, that's a really compound -- it's got a lot of terms  
01:15:15 19 in there. First of all, I don't know if what you're saying is  
01:15:19 20 correct about this, the one I examined being laser printed or  
01:15:25 21 not. And I haven't had an opportunity to examine this. So,  
01:15:28 22 I'm going to kind of move that one aside because I don't have  
01:15:32 23 any opinion that I -- I don't have any facts upon which I can  
01:15:35 24 base an opinion.

01:15:36 25 Q Well, you concluded that the document was a forgery,

01:15:40 1 correct?

01:15:40 2 A I concluded -- I conclude that the copy is a copy. I  
01:15:45 3 don't -- courts conclude that copies are forgeries. I don't  
01:15:49 4 do that. I don't make conclusions of the law. Okay?

01:15:52 5 Q You lost me there.

01:15:56 6 Are you here saying you don't have an opinion as to  
01:15:58 7 whether or not the signature was a forgery?

01:16:00 8 A I am saying it's a copy. I'm very clear about that in  
01:16:05 9 all of my reports. It's a copy.

01:16:07 10 Q And that doesn't --

01:16:08 11 A It becomes an forgery when presented as an original  
01:16:12 12 document in a legal proceeding or for payment.

01:16:14 13 Q Okay.

01:16:14 14 A So.

01:16:15 15 Q It transforms from a copy to a forgery?

01:16:18 16 A Yes.

01:16:19 17 Q Oh?

01:16:20 18 A All forgeries are copies. All copies are not forgeries.  
01:16:24 19 It's that simple.

01:16:30 20 Q Okay.

01:16:30 21 So, it's fair to say then that at no time in  
01:16:33 22 your scientific analysis of these documents did you make any  
01:16:37 23 inquiry into how and why these bar codes were placed on the  
01:16:41 24 document.

01:16:41 25 Is that fair?

01:16:42 1 A Oh, I examined the bar codes.

01:16:44 2 Q Okay.

01:16:45 3 A And I examined -- I read the bar codes underneath, to the  
01:16:48 4 extent that I could, using, uh, certain techniques I have of  
01:16:54 5 looking through the document.

01:16:55 6 Q But wouldn't you agree that if someone was out to copy  
01:16:59 7 this original document, they would not only have to copy the  
01:17:02 8 template and the signatures, they would also have to find bar  
01:17:07 9 codes that were the equivalent of the originals?

01:17:11 10 A Well, all bar codes are manufactured, so they would have  
01:17:15 11 to either have some bar codes available, or manufacturer some  
01:17:20 12 bar codes.

01:17:21 13 Q Okay.

01:17:22 14 A Uh-huh.

01:17:23 15 Q Would you look at the deed of trust, please. This is  
01:17:30 16 Exhibit 4.

01:17:38 17 Do you have that?

01:17:40 18 A I do. I just have to get to it.

01:17:43 19 Q The number will appear on the back page of the exhibit.  
01:17:46 20 It's 4.

01:17:47 21 A Okay. We're good.

01:17:48 22 Q You got it?

01:17:49 23 Okay. Same question again. Does this appear to be  
01:17:52 24 the deed of trust that you examined in my office on June 8th?

01:17:56 25 A I can't guarantee that this is it because I haven't

01:17:59 1 examined this document and compared it to my records.

01:18:02 2 Q Would it be possible for you to do that?

01:18:04 3 A It would take time. Yeah.

01:18:05 4 Q Would it take more than half-an-hour?

01:18:07 5 A I -- it takes me three hours to examine each batch of  
01:18:12 6 documents. That's, that's pretty much a standard.

01:18:14 7 Q So, you're telling us that in three hours you could tell  
01:18:17 8 us definitively whether or not that document was the one you  
01:18:20 9 examined in my office on June 8th?

01:18:22 10 A I may be able to, but that's -- I -- when we begin an  
01:18:27 11 examination, I don't know where it's going to take me. Okay?  
01:18:29 12 So -- so, yeah. So in order to form a solid opinion, I would  
01:18:34 13 need to examine the documents.

01:18:35 14 Q Okay. And that, you say, takes around three hours?

01:18:38 15 A In almost every case it takes three hours because of  
01:18:41 16 the number of photographs and scans and so on.

01:18:45 17 Q And you would need to do all of that just to confirm that  
01:18:48 18 that was the same document that you looked at on June 8th?

01:18:51 19 A To be thorough.

01:18:52 20 Q How about to be prudent, but not thorough, as your  
01:18:56 21 definition?

01:18:56 22 A I don't do that.

01:18:57 23 Q Okay. But you --

01:18:58 24 A That's why I take three hours to, you know, make --

01:19:01 25 Q All right.

01:19:01 1 A -- copies, make the record of the documents that I'm  
01:19:05 2 examining.

01:19:06 3 Q We'll get back to that.

01:19:08 4 Would you turn, please, to page 4 of 4 in the deed  
01:19:11 5 of trust.

01:19:17 6 And do you see at the bottom left, there's what's  
01:19:19 7 called a notary jurat?

01:19:28 8 A Yes.

01:19:28 9 Q Do you see that?

01:19:29 10 And you see that the jurat is of Cindy Reyes,  
01:19:34 11 correct?

01:19:34 12 A It says so.

01:19:35 13 Q Okay. All right.

01:19:36 14 And there's a signature in what appears to be  
01:19:39 15 black ink?

01:19:40 16 A It appears to be. Yes.

01:19:41 17 Q So would you turn that page over and rub your finger  
01:19:45 18 underneath, or where the notary stamp and signature are?

01:19:52 19 A (Witness complies.)

01:19:54 20 Yeah.

01:19:54 21 Q Feel anything?

01:19:55 22 A Yes, I do.

01:19:56 23 Q So we can assume then that the document you have before  
01:20:01 24 you was, in fact, the paper that the notary jurat was placed  
01:20:07 25 on in 2002, right?



01:20:09 1 A No. You can't assume anything.

01:20:11 2 Q Why not?

01:20:12 3 A I would have to compare this with the, with my record of

01:20:16 4 the original document. This, this can be made.

01:20:20 5 Q What can be made?

01:20:21 6 A The notary stamp.

01:20:22 7 Q Ah. Good.

01:20:22 8 A Yeah.

01:20:24 9 Q So now our clever forgerer would not only have to have a

01:20:28 10 bar code machine, but figure out how to get Cindy Reyes'

01:20:32 11 notary stamp, correct?

01:20:33 12 A It's not hard to do. You can have them made.

01:20:34 13 Q Are you an expert in notary stamps?

01:20:36 14 A Yeah. You can have them made for a few dollars, so.

01:20:39 15 Q Have you ever done that?

01:20:41 16 A Yes.

01:20:41 17 Q You've had a notary stamp made for a few dollars?

01:20:44 18 A It wasn't a notary stamp. It was an endorsement stamp

01:20:48 19 and I did it to see how it behaved on the paper. But, it was

01:20:52 20 an actual copy of the real stamp.

01:20:55 21 Q But you're not saying that you actually went out and

01:20:57 22 tried to purchase a notary public stamp, are you?

01:21:00 23 A I had it made.

01:21:01 24 Q It wasn't a notary public stamp?

01:21:04 25 A No. Not a notary stamp. I had an endorsement stamp

01:21:08 1 made, a product endorsement stamp, endorsement. And blank  
01:21:12 2 with the signature on it.

01:21:13 3 Q So looking at Exhibit 4, the deed of trust, how  
01:21:19 4 many printing processes appear on these papers, on these  
01:21:24 5 pages of the deed of trust? How many different printing  
01:21:27 6 processes appear?

01:21:30 7 A What do you mean by "printing processes"? Different  
01:21:33 8 types of printers?

01:21:34 9 Q You really don't understand what "printing processes"  
01:21:38 10 means?

01:21:38 11 A Well, I just want to know what you --

01:21:40 12 Q You're a document examiner.

01:21:42 13 A (Sigh.)

01:21:46 14 Q I'll give you a clue. A pen would be a printing process.  
01:21:51 15 An inkjet would be a printing process. A laser printer would  
01:21:53 16 be a printing process. A typewriter would be a printing  
01:21:56 17 process.

01:21:58 18 Do you understand what I'm asking now?

01:21:59 19 A I, I mean I'm understanding what you're saying.

01:22:00 20 Q So how many different printing processes appear on the  
01:22:03 21 deed of trust?

01:22:04 22 A Well, I would have to count them by your standard -- not  
01:22:10 23 that I necessarily agree with some of your terms.

01:22:12 24 Okay. So I've got one, two, three -- uh, I got what  
01:22:17 25 appears to be some typewriting, four. And I've got some,

01:22:25 1 uh -- what appear to be APN numbers on the front. And of  
01:22:32 2 course, you have the bar codes. Right?

01:22:35 3 Q So if I understood you correctly, on the bar codes,  
01:22:38 4 that -- those did not figure into your investigation  
01:22:41 5 whatsoever, correct?

01:22:42 6 A That's not actually true.

01:22:43 7 Q Well, how did they figure into your investigation?

01:22:46 8 A I already told you that I looked through them to see if  
01:22:49 9 the bar code underneath is the same as the bar code at the  
01:22:53 10 top because it's a real question why are there two-bar codes  
01:22:57 11 there?

01:22:57 12 Q Okay. There are two-bar codes.

01:22:59 13 A Yeah. Why are there two bar codes?

01:23:01 14 Q Are there two bar codes on page 1 of Exhibit 5?

01:23:09 15 A Let's see -- this is four.

01:23:12 16 Q The deed of trust -- I'm sorry.

01:23:14 17 Exhibit 4, are there two bar codes on the page 1 of  
01:23:18 18 Exhibit 4?

01:23:18 19 A Okay. We're back to 4.

01:23:20 20 Okay. There is two bar codes on page 2.

01:23:28 21 Q Right?

01:23:30 22 A Two bar codes on page 3.

01:23:34 23 Q Okay.

01:23:37 24 A And two bar codes on page 4.

01:23:40 25 Q And how about page 5?

01:23:43 1 A Okay. And it's hard to see in this light, but, uh, kind  
01:23:58 2 of looks like one. But, I don't have good illumination here,  
01:24:03 3 so.

01:24:03 4 Q Okay. Did you come to any determinations as to how  
01:24:07 5 these bar codes were placed on what you believe to be a copy  
01:24:11 6 of an original document?

01:24:12 7 A They're stickers.

01:24:14 8 Q Okay. And so the person, it would be fair to say,  
01:24:17 9 that was involved in copying or forging the signature, would  
01:24:23 10 have also had to have redone the bar codes on the document,  
01:24:27 11 right?

01:24:28 12 A Well, bar code machines are ubiquitous.

01:24:33 13 Q Right. But whether they're ubiquitous or not, under  
01:24:36 14 your hypothesis, sir, the person doing the changing of the  
01:24:40 15 signature would have had -- also to have changed out the bar  
01:24:43 16 codes, correct?

01:24:43 17 A Uh, if they're remanufacturing a document, they would  
01:24:52 18 have to put bar codes on the document.

01:24:54 19 Q Right.

01:24:54 20 A Okay.

01:24:55 21 Q Yeah. You agree with that?

01:24:56 22 A Yeah.

01:24:57 23 Q Good.

01:24:57 24 A At some point.

01:24:59 25 Q Now let's go down the front page where it says, "when

01:25:03 1 recorded mail to," and it says "Wells Fargo Home Equity..."  
01:25:07 2 et cetera, et cetera. What type of type medium is that -- or  
01:25:11 3 printing process is that. Excuse me.

01:25:13 4 A Well, it, it -- I would have to look at it more closely.  
01:25:19 5 It kind of looks like typewriting.

01:25:21 6 Q Okay.

01:25:22 7 A Okay? But, it could also be done by a printer, you know,  
01:25:27 8 just any printer. Right? Because any printer can print  
01:25:31 9 typewritten stuff. Right?

01:25:33 10 Q But it wasn't significant enough for you, in June  
01:25:37 11 of 2018, for you to determine whether that was a printer or  
01:25:40 12 whether that was a typewriter, correct?

01:25:42 13 A Uh, I looked at it, uh -- but the -- there are many  
01:25:50 14 explanations for this type of thing. So let's say it was  
01:25:55 15 an inkjet or laser jet or something like that, it wouldn't  
01:26:00 16 be material to my opinion. So, it's not as important as other  
01:26:05 17 anomalies, if there are any anomalies there.

01:26:08 18 Q So the answer to my question is you didn't really study  
01:26:12 19 this as part of your analysis as to whether or not this  
01:26:15 20 document was an original or a copy, correct?

01:26:17 21 A No. I have a blownup copy. I have a really big  
01:26:20 22 photograph of this thing.

01:26:21 23 Q Did ya?

01:26:22 24 A Yeah. And I also have microscopic pictures of this area,  
01:26:27 25 which are not in the report. I've got, like, 500 pictures,

01:26:31 1 and not every one of them went into my report because it would  
01:26:35 2 be overwhelming, you know, but -- so, yeah, the key thing, the  
01:26:40 3 most probative evidence are the inkjet satellites. That's  
01:26:44 4 probative.

01:26:44 5 Q Well, we're not talking about those. We're talking about  
01:26:47 6 the typewritten information on the top of page 1 of exhibit 4.

01:26:52 7 A Yeah, and that might have some -- in some -- when  
01:26:55 8 considered in the totality of the evidence, it might have  
01:26:58 9 some significance. But in this particular case, it didn't.

01:27:01 10 Q Okay. So you would agree with me that whatever machine  
01:27:04 11 or process was used to put that information, those words on  
01:27:07 12 this page, it was different than the inkjet printer that you  
01:27:11 13 claim was used to create the signature.

01:27:13 14 Fair enough?

01:27:14 15 A I'm not drawing that conclusion.

01:27:15 16 Q Well, do you disagree?

01:27:17 17 A I'm saying -- I'm not drawing that conclusion.

01:27:20 18 Q That wasn't my question.

01:27:21 19 Do you disagree?

01:27:22 20 A I didn't examine it to obtain such a conclusion.

01:27:24 21 Q You didn't think that was germane to your overall  
01:27:27 22 assignment to determine whether this, this was a fake or  
01:27:30 23 not?

01:27:30 24 A The satellite ink droplets are probative standards. The  
01:27:35 25 ATSM standards, SWG doc standards say you can stop when you

01:27:42 1 have sufficient information for your opinion.

01:27:43 2 Q So you stopped?

01:27:44 3 A You don't have to keep going.

01:27:45 4 Q You stopped, right? You just didn't go there?

01:27:48 5 A It didn't contribute any weight to the opinion.

01:27:52 6 Q All right. And because you really didn't analyze it?

01:27:55 7 A But, no.

01:27:56 8 MR. PANKOPF: Objection --

01:27:57 9 THE WITNESS: You're drawing conclusions. I did  
01:28:00 10 analyze it and I found it to be not material.

01:28:02 11 THE COURT: Okay. I've already said this many  
01:28:05 12 times, if there's an objection, please, stop. Don't testify.

01:28:09 13 THE WITNESS: Okay.

01:28:10 14 THE COURT: More importantly, before you  
01:28:11 15 answer any question, maybe pause a moment, sir, to allow for  
01:28:15 16 an objection to be made and for a ruling to be made before  
01:28:18 17 we actually have testimony of people talking over each other.

01:28:21 18 THE WITNESS: Sorry.

01:28:22 19 THE COURT: I think the question is fair, which  
01:28:24 20 was -- Miss Reporter, can you read back.

01:28:46 21 (Record read.)

01:28:47 22 THE COURT: And that's --

01:28:47 23 THE WITNESS: And I'm disagreeing with you. I  
01:28:50 24 did analyze it and found it to be immaterial.

25 ///

01:28:52 1 BY MR. WILLIS:

01:28:53 2 Q Well, and I don't want to beat this horse any further,  
01:28:55 3 but if you did analyze it, you didn't determine what type of  
01:28:59 4 process made this print, correct, whether it was an inkjet,  
01:29:02 5 laser, typewriter, some other form of printer?

01:29:05 6 A That's not true.

01:29:07 7 Q Okay. What was it? What is it? Is it typed?

01:29:13 8 A I said this wasn't material to my opinion. And when,  
01:29:17 9 when a signature is made with an inkjet printer, that's  
01:29:21 10 material.

01:29:22 11 Q Yeah, I --

01:29:22 12 A And I don't have to look for -- you know, determine  
01:29:25 13 whether or not the document -- it doesn't mean I didn't  
01:29:27 14 analyze it. I looked at it and I said this isn't material.

01:29:31 15 Q But you didn't really analyze it in the holistic sense  
01:29:36 16 of what had to happen, if someone was out to create a forged  
01:29:43 17 document, to ensure that this information would be contained  
01:29:48 18 on the forged document and look real, right?

01:29:51 19 You didn't do any analysis like that?

01:29:53 20 A That's not required in the standard to do that kind  
01:29:55 21 of analysis.

01:29:57 22 Q Right. If you're looking to the compare whether a  
01:29:59 23 document was created by the same inkjet printer, yes, I  
01:30:03 24 agree with it you. But, if you're looking at a document to  
01:30:06 25 determine whether it's a forgery, wouldn't you agree that



01:30:09 1 that's critical?

01:30:11 2 A It could be, but it's not in this case.

01:30:14 3 Q Do you understand you are being proffered as an expert  
01:30:19 4 witness to conclude, to opine, that the three documents in  
01:30:24 5 front of you, Exhibits 3, 4 and 5 are forgeries?

01:30:27 6 Do you understand that?

01:30:28 7 A Yes.

01:30:28 8 Q Okay. And you are here to opine that they're forgeries?

01:30:32 9 A I'm here to opine that they're copies. It's up to the  
01:30:36 10 Court to determine if they're forgeries. Not me.

01:30:38 11 Q Okay. Potential forgeries. But, they're not real,  
01:30:42 12 correct?

01:30:42 13 A They're copies.

01:30:44 14 Q All right. Look at the ink on the top left, the APN.

01:30:50 15 Do you see that?

01:30:50 16 A Uh-huh.

01:30:51 17 Q The recording information on the top left of the first  
01:30:54 18 page, do you know what ink that is?

01:30:57 19 A It's blue ink.

01:30:58 20 Q And do you know what type of printing process put that  
01:31:02 21 blue ink there?

01:31:06 22 A I didn't analyze this particular thing because it wasn't  
01:31:10 23 material to the conclusion of the document to make -- to  
01:31:14 24 render such an opinion. I could do that.

01:31:17 25 Q Well -- okay.

01:31:18 1 A But, it wasn't necessary.

01:31:19 2 Q We may be back to the same point, but if you are here  
01:31:23 3 testifying that this document is a copy or a forgery or a  
01:31:28 4 fake, wouldn't you agree that having some explanation as to  
01:31:31 5 how that information was placed on the -- what you claim is  
01:31:36 6 the copy -- couldn't you agree that that information would be  
01:31:39 7 material?

01:31:39 8 A I told you, I thought that it wasn't material.

01:31:43 9 Q Okay. Not material.

01:31:46 10 All right. Would you mind handing Exhibits 3, 4  
01:31:57 11 and 5 back to Her Honor. That's the rider, the deed of trust,  
01:32:02 12 and the HELOC.

01:32:07 13 A Okay. This is 4. Three. And what part was the other  
01:32:07 14 one, 5?

01:32:07 15 Q Three, 4, 5?

01:32:25 16 A Okay. I got 5-A -- Oh, okay. Where is 5 hiding?

01:32:28 17 Oh, here it is. Okay.

01:32:30 18 THE COURT: Thank you, sir.

01:32:32 19 BY MR. WILLIS:

01:32:33 20 Q Now, doctor, how long do you plan to stay in Reno?

01:32:40 21 A I was planning on leaving tonight.

01:32:42 22 Q Okay.

01:32:43 23 A On an airplane. Right?

01:32:45 24 Q What time is your flight?

01:32:47 25 A I believe around 6:30. I haven't double checked yet.

01:32:50 1 Q Okay.

01:32:51 2 Now if I understand what you told us just now, it  
01:32:54 3 would take you about three hours for you to determine whether  
01:32:59 4 or not Exhibits 3, 4 and 5 were the documents that you  
01:33:02 5 examined in my office.

01:33:04 6 A I could give some sort of opinion on it. Yeah.

01:33:07 7 Q Yeah. Could you determine, definitively, whether they  
01:33:11 8 were the documents you reviewed in our office?

01:33:14 9 A I think it would be unfair for ask me to, uh, collect  
01:33:20 10 the data and do a thorough analysis in three hours because  
01:33:24 11 rather I collect the data in three hours and I take it back  
01:33:28 12 and analyze it. It may take a week.

01:33:30 13 Q But you're doing that for the purpose of determining  
01:33:33 14 whether or not an inkjet printer was used to create signature.  
01:33:37 15 I'm just asking you to confirm these are the same three  
01:33:40 16 documents. That's a different animal.

01:33:42 17 A That's a different task I've never been asked to do  
01:33:45 18 before.

01:33:45 19 Q All right.

01:33:46 20 A Right? So, I'm saying the analysis portion of it taking  
01:33:49 21 more time than the data collection.

01:33:50 22 Q Well, how much time would you need?

01:33:53 23 A I'm not absolutely certain. I, usually, am not under  
01:33:56 24 that kind of time pressure. I take this stuff back and I come  
01:34:00 25 back a week or two, whatever it takes.

01:34:02 1 Q Week or two?

01:34:02 2 A Yeah. Sometimes it's real quick. Sometimes it takes  
01:34:06 3 longer. It depends on the documents.

01:34:10 4 Q So, doctor, let me ask you this. During the time that  
01:34:14 5 you were performing services for Mr. Slovak, and examining  
01:34:20 6 and analyzing the Exhibits 3, 4 and 5 that you had before you,  
01:34:27 7 did you ever consider an alternative hypotheses to what was  
01:34:32 8 your conclusion that these were copies waiting to be  
01:34:36 9 forgeries?

01:34:38 10 A I actually don't understand that question.

01:34:42 11 Q Well, I think we've established that you're here  
01:34:44 12 testifying that the signature is not the original signature;  
01:34:48 13 that the document is a copy, correct?

01:34:51 14 A It's a copy. Yeah.

01:34:52 15 Q And, if that document were used in some way, it would  
01:34:56 16 become a forgery?

01:35:00 17 A Well, that's not up to me to decide. Again, that's a  
01:35:03 18 legal conclusion. I just don't do those.

01:35:05 19 Q Well, you realize that you, either directly or  
01:35:08 20 indirectly, are accusing me of perpetrating a fraud on  
01:35:12 21 the Court.

01:35:12 22 Do you realize that?

01:35:14 23 A I'm not accusing anyone of anything. I'm just simply  
01:35:18 24 reporting on what I'm finding in the document, and that's the  
01:35:22 25 scope of my investigation. I don't have a legal opinion at

01:35:27 1 all.

01:35:27 2 Q So, when you were doing this project --

01:35:29 3 A Uh-huh.

01:35:29 4 Q -- did you have any alternate hypotheses that would  
01:35:35 5 mean a reason, other than an inkjet printer, that the document  
01:35:40 6 was -- do you have any -- did you have any alternative  
01:35:44 7 hypotheses related to the quality or validity of the signature  
01:35:49 8 on the document?

01:35:51 9 A Let me explain how I do this. I go through each picture  
01:35:57 10 and I make observations of each picture.

01:35:59 11 Q Uh-huh?

01:36:00 12 A I try to select the pictures from the large set of  
01:36:02 13 photographs that I have that contain information.

01:36:07 14 Q Okay.

01:36:07 15 A Then I analyze that.

01:36:08 16 Q Okay.

01:36:09 17 A And I try not to form any final opinion about anything  
01:36:12 18 until I have a whole bunch of examples that I think represent  
01:36:16 19 the document. And then I don't make -- I don't start out with  
01:36:21 20 a hypotheses. I start with observations and I record my  
01:36:27 21 observations like you see in the thing, where I'm making  
01:36:30 22 notes. Oh, that's a satellite. This is feathering from  
01:36:33 23 the ink.

01:36:34 24 Q Uh-huh.

01:36:34 25 A This is a toner particle or this sort of thing.

01:36:38 1 So, so those are the obs -- that's the  
01:36:41 2 observational stage. Then, after that, I collect all of  
01:36:45 3 these observations together and then I try to determine  
01:36:50 4 whether or not they conflict with each other. They lead  
01:36:52 5 to conflicting conclusions. If they do, then I've got a  
01:36:56 6 problem. It's going to take me -- I'm going to have to sort  
01:36:59 7 it out.

01:37:00 8 So then I consider an alternate hypotheses at this  
01:37:03 9 stage. Okay? And then in this particular case, all the  
01:37:07 10 indications were pointing in the same direction.

01:37:09 11 So I don't have a lot of, lot of inconsistencies in  
01:37:13 12 the indicators that conflict with the probative evidence, so  
01:37:17 13 it's pretty, a pretty tight situation. But, it's not always  
01:37:21 14 that way. Sometimes I have nothing probative and I just have  
01:37:25 15 a lot of indicators.

01:37:26 16 Q Well, you would agree, would you not, that your  
01:37:28 17 indicators all arose from the analysis of the initials  
01:37:32 18 and the signatures, correct?

01:37:33 19 A The indicators come from the features that are -- for  
01:37:37 20 example, if I'm dealing with an inkjet document, much of  
01:37:41 21 those features are identified, largely, in an ATSM or SWG doc,  
01:37:49 22 liquid inkjet standard.

01:37:52 23 Q Did you ever, sir, take your hypothesis -- which was,  
01:37:59 24 the signature was placed by somebody after the fact with an  
01:38:03 25 inkjet -- and see whether or not there was any extraneous

01:38:07 1 evidence that would support a different hypothesis, such as  
01:38:11 2 the bar codes, such as the typewriting, such as the other  
01:38:18 3 bar code on the condominium rider, such as the ballpoint ink  
01:38:24 4 on the front page?

01:38:26 5 Did you ever consider that those, those anomalies,  
01:38:34 6 if you will, were inconsistent with your hypothesis that  
01:38:37 7 somebody deliberately set out to make a copy using an inkjet  
01:38:41 8 printer.

01:38:42 9 Did you ever think about that?

01:38:43 10 A I, uh, I, I consider alternative hypotheses, for example,  
01:38:49 11 with respect to the bar code.

01:38:51 12 Q Oh.

01:38:51 13 A Okay? And the question is why are there two bar codes,  
01:38:55 14 one on top of the other, on four pages, right -- or three,  
01:38:59 15 three or four pages of the thing? Why? Why is that?

01:39:04 16 And was there an error made in the original bar  
01:39:07 17 code that they then had to correct by putting a new bar code  
01:39:10 18 over it? And then to find --

01:39:11 19 Q Let me stop you, doctor. I think we're plowing new  
01:39:14 20 ground.

01:39:14 21 A So I'm answering your question that you asked me if I  
01:39:17 22 considered alternative hypothesis. That's the type of  
01:39:21 23 hypothesis test I consider in the alternative.

01:39:24 24 Q Did you, when you were exercising your scientific  
01:39:27 25 methods, ever consider, as an alternative hypothesis, that the

01:39:29 1 documents were legitimate, and the signatures that appeared on  
01:39:33 2 them were those of Mr. Slovak?

01:39:35 3 A Yes. Initially. I always start out with -- you know, I  
01:39:39 4 don't know what this is going to turn out. I don't know where  
01:39:42 5 these documents are going to take me.

01:39:45 6 Q But, you had stopped your investigation after doing  
01:39:47 7 nothing more than analyzing the signatures and the initials,  
01:39:51 8 and not coming up with explanations for the remainder of the  
01:39:56 9 printing processes reflected in these documents, correct?

01:40:00 10 A That's not correct.

01:40:02 11 Just because it's not in the report, doesn't mean  
01:40:04 12 I didn't do the work. The work that's reflected in the  
01:40:08 13 report is what I consider to be the, like the most important  
01:40:13 14 features. That doesn't mean I didn't look at the rest of the  
01:40:15 15 document. Trust me. I looked at everything and I picked  
01:40:20 16 those things which I considered to be material and important.  
01:40:23 17 Because if I presented everything, the report would be  
01:40:28 18 200 pages long. And that -- you know, this is not a good  
01:40:32 19 situation, you know. It's -- and it's also unnecessary.  
01:40:37 20 According to the standards, you're allowed to stop when you  
01:40:41 21 have sufficient evidence. Okay? I mean, it's very clear.

01:40:44 22 Q Doctor, have you ever had an engagement in which you  
01:40:49 23 determined the signatures on loan instruments were authentic?

01:40:52 24 A Yes.

01:40:53 25 Q How many?



01:40:54 1 A Um, I had a savings and loan in --

01:40:57 2 Q The question was how many?

01:40:59 3 A Well, you -- I have to pull them out of my memory. Okay?

01:41:03 4 Q Pull away.

01:41:05 5 A Yeah. In a bank in Santa Fe recently, uh -- and

01:41:11 6 sometimes there's simply not enough evidence to -- for me

01:41:15 7 to render an opinion. And in a case like that, I tell the

01:41:18 8 client, I say, look, there's not evidence here in these

01:41:23 9 documents for me to render an opinion.

01:41:27 10 And sometimes I've had -- when I've done that,

01:41:30 11 sometimes they make me do one anyway, and I say it's not going

01:41:33 12 to change what I'm telling you. Right? Then they get mad.

01:41:37 13 So, that's the way it works.

01:41:47 14 MR. WILLIS: Your Honor, I have nothing further  
01:41:48 15 of this witness.

01:41:49 16 THE COURT: Okay. Thank you, sir.

01:41:57 17 MR. WILLIS: One housekeeping matter.

01:41:58 18 THE COURT: Yes.

01:41:58 19 MR. WILLIS: I referenced two decisions from  
01:42:02 20 a court, one in New York, one in Colorado. I have copies  
01:42:06 21 of those orders, as well as an additional order from the  
01:42:12 22 MacDonald case disqualifying Dr. Kelley. We have set these  
01:42:17 23 up with a declaration by Ms. Dove because she obtained them  
01:42:22 24 from Pacer and other public sources.

01:42:25 25 In light of your admonition that we shouldn't be

01:42:28 1 filing much more in here, rather than filing it, would Your  
01:42:31 2 Honor accept it as an exhibit and take judicial notice of  
01:42:34 3 the opinions?

01:42:35 4 THE COURT: Have you provided a copy to the  
01:42:37 5 plaintiff's counsel?

01:42:38 6 MR. WILLIS: I will do so right now.

01:42:44 7 THE COURT: If they're court records then,  
01:42:46 8 under Rule 201, judicial notice should be more than sufficient  
01:42:51 9 under the circumstances. But, I do think that we should allow  
01:42:55 10 the opportunity for the plaintiff's counsel to review those  
01:42:58 11 documents and to see if there's any objection, at the very  
01:43:00 12 minimum. And I'll give them the opportunity to review that.  
01:43:04 13 I think it's little bit much to ask them to do it right now  
01:43:08 14 and make a determination whether they have an objection. So,  
01:43:11 15 I think maybe what we'll do is give them time to look over  
01:43:14 16 those at the break, and then we'll make a decision of that.  
01:43:16 17 But if they're court records, I have no problem taking  
01:43:19 18 judicial notice of them, but I won't make a decision until I  
01:43:22 19 hear objections from plaintiff's counsel on that.

01:43:24 20 Mr. Pankopf, do you have any redirect, sir?

01:43:28 21 MR. PANKOPF: Uh, just one, I believe, Your  
01:43:32 22 Honor -- or one issue. One or two questions.

01:43:36 23 **REDIRECT EXAMINATION**

01:43:37 24 BY MR. PANKOPF:

01:43:44 25 Q Dr. Kelley, I'm going to refer you back to Exhibit 9,

01:43:49 1 page 2, of the SWG doc standards.

01:44:06 2 A Uh, okay. 9-002, Exhibit 9-002.

01:44:11 3 Q And the paragraph 4.1 referring to "the procedures  
01:44:15 4 outlined here are grounded in the generally accepted body  
01:44:18 5 of knowledge and experience in the field of forensic document  
01:44:22 6 examination."

01:44:22 7 A Yes.

01:44:23 8 Q Right. In addition to the following sentence regarding  
01:44:28 9 "the ability to make a determination as to whether a copy  
01:44:32 10 that was printed by an inkjet printer, and another copy that  
01:44:40 11 was printed by an inkjet printer -- strike that. I got lost.

01:44:46 12 THE COURT: No problem, sir. Take your time.

01:44:50 13 BY MR. PANKOPF:

01:44:53 14 Q Basically my question is it was these standards and  
01:44:56 15 methodologies that allow you to make a determination as to  
01:45:00 16 whether a particular copy was printed by an inkjet, an inkjet  
01:45:08 17 printer, correct?

01:45:08 18 A Absolutely correct. And it has to be that way because  
01:45:13 19 you can't prove that a document came from -- two documents  
01:45:19 20 came from the same inkjet printer without knowing it's an  
01:45:23 21 inkjet printer that printed it.

01:45:25 22 Q Right. And some of these features that they identify  
01:45:28 23 within these standards, they are indicators that these -- the  
01:45:35 24 copies was produced by an inkjet printer, correct?

01:45:39 25 A That's right. And so if there were different kinds of

01:45:42 1 inkjet printers, you would expect those features to exhibit  
01:45:45 2 themselves in different ways, manifest themselves in different  
01:45:50 3 ways, and I --

01:45:53 4 MR. PANKOPF: So, Your Honor, that's the final  
01:45:56 5 question. And, uh, I don't know if, at this time, if -- you  
01:46:00 6 know, I would like to move Dr. Kelley's testimony into the  
01:46:05 7 record and have him be qualified as an expert witness. I  
01:46:08 8 didn't know if you want to do that now, or if you were going  
01:46:11 9 to take another review.

01:46:12 10 THE COURT: I'm going to take that under review,  
01:46:14 11 sir. Thank you.

01:46:15 12 However, I do have a few questions that I would like  
01:46:18 13 to clarify too, if I may.

01:46:20 14 Sir, just so I'm clear, you testified about the  
01:46:23 15 specialty organizations to which you are a member, and I  
01:46:25 16 believe you stated that you were a member of the IEEE, is that  
01:46:29 17 correct.

01:46:30 18 THE WITNESS: I triple E.

01:46:32 19 THE COURT: But there are no specialty  
01:46:33 20 organizations which you're a member of that relate to forensic  
01:46:38 21 document examination, is that correct?

01:46:40 22 THE WITNESS: Uh, yeah. The I triple E does a  
01:46:44 23 lot of document research.

01:46:46 24 THE COURT: But, is it an organization that's  
01:46:48 25 specific to forensic document examination?

01:46:50 1 THE WITNESS: They have specific research  
01:46:53 2 there to automate the process of determining whether or not a  
01:46:57 3 document is authentic or not by computer.

01:47:00 4 THE COURT: Okay.

01:47:01 5 THE WITNESS: It's a computer --

01:47:02 6 THE COURT: Let me ask this one more time.

01:47:04 7 THE WITNESS: Okay.

01:47:05 8 THE COURT: I really need you to answer my  
01:47:06 9 question --

01:47:07 10 THE WITNESS: Okay.

01:47:07 11 THE COURT: -- which is, is the I triple E an  
01:47:10 12 organization that's specific to the specialty of forensic  
01:47:14 13 document examinations, or is it an engineering group?

01:47:18 14 THE WITNESS: It covers a wide latitude of  
01:47:22 15 electronic and electrical engineering things. And one of the  
01:47:27 16 subgroups would be this forensic document stuff.

01:47:32 17 THE COURT: Okay.

01:47:33 18 Sir, you indicated there was, there was a series of  
01:47:36 19 questions about things that you have written, but there were  
01:47:39 20 no questions about whether or not you've ever taught anything  
01:47:42 21 with respect to forensic document examination.

01:47:45 22 Have you ever taught any classes, or spoke or  
01:47:48 23 provided any lectures on this topic?

01:47:50 24 THE WITNESS: Uh, I've sometimes do it -- do  
01:47:54 25 provide, uh, demonstrations of it to, uh -- I've done it to

01:47:59 1 groups of lawyers and people like that.

01:48:01 2 THE COURT: Okay.

01:48:01 3 THE WITNESS: But not, like, at a university.

01:48:06 4 THE COURT: And as I understood the questions  
01:48:08 5 that Mr. Willis had for you this afternoon, you were asked  
01:48:11 6 specifically about anytime where you found a document to be  
01:48:15 7 authentic, and I only heard you articulate one time.

01:48:19 8 Is that correct?

01:48:20 9 THE WITNESS: No. There's more than one time.

01:48:21 10 THE COURT: Okay.

01:48:22 11 THE WITNESS: So the -- and there's a whole  
01:48:25 12 group of them where there's no opinion because there's not  
01:48:28 13 sufficient evidence.

01:48:29 14 THE COURT: Okay.

01:48:29 15 THE WITNESS: So that, that case was, uh, a  
01:48:34 16 savings and loan in Florida. The note was perfect. I mean,  
01:48:38 17 I couldn't find anything wrong with it.

01:48:40 18 THE COURT: Okay.

01:48:40 19 THE WITNESS: Yeah. It was absolutely perfect.

01:48:43 20 And then recently, in Santa Fe, I had a case where  
01:48:46 21 the loan was made, and it was a JP Morgan loan made in 2011.  
01:48:53 22 And this is after -- you know, this light compared to what I  
01:48:59 23 usually see, and I could not come up with any, you know,  
01:49:03 24 definitive findings on that based on the information I had  
01:49:06 25 available in the document. So, I announced to the person that

01:49:10 1 I, uh, that I couldn't give them an opinion that it was  
01:49:16 2 inauthentic.

01:49:17 3 THE COURT: With respect to the documents that  
01:49:19 4 you were provided in Exhibits 3, 4 and 5 from the defense, the  
01:49:23 5 documents that you have looked at before that they indicated  
01:49:26 6 were asking questions about were these the documents that  
01:49:28 7 you reviewed, do you recall those documents that you were  
01:49:32 8 testifying about?

01:49:33 9 THE WITNESS: Well, uh, are you -- uh, are  
01:49:36 10 you talking about the ones I examined or the ones that --

01:49:39 11 THE COURT: I'm asking about the ones you were  
01:49:41 12 asked questions about today.

01:49:42 13 THE WITNESS: Oh. Okay.

01:49:43 14 THE COURT: Do you have any reason to believe  
01:49:45 15 that these are not the same? Do they look the same as the  
01:49:48 16 documents you reviewed when you were at their office?

01:49:51 17 THE WITNESS: They're similar; however, there's  
01:49:53 18 some differences in the -- I don't think they presented the  
01:49:58 19 copies, but, uh --

01:49:59 20 THE COURT: Okay. That answers my question,  
01:50:02 21 sir. That's fine.

01:50:02 22 THE WITNESS: Okay.

01:50:03 23 THE COURT: Is there any further questions at  
01:50:05 24 this point?

01:50:05 25 MR. PANKOPF: Yeah, Your Honor.

01:50:06 1 THE COURT: Mr. Pankopf.

01:50:07 2 MR. PANKOPF: I forgot one other issue. It  
01:50:10 3 shouldn't take long.

01:50:11 4 **REDIRECT EXAMINATION (resumed)**

01:50:11 5 BY MR. PANKOPF:

01:50:12 6 Q Can I refer you to Exhibit 15.

01:50:15 7 A 15? Okay.

01:50:24 8 Oh. Okay.

01:50:26 9 Q Can you review the pages --

01:50:30 10 A Oh. Oh.

01:50:31 11 Q -- within Exhibit 15?

01:50:33 12 A Okay. Yeah, there's a Sharpie pen.

01:50:38 13 Q Well, look at them all.

01:50:40 14 A Oh, okay.

01:50:41 15 Q There's more than one page in Exhibit 15.

01:50:43 16 A There's a Sharpie pen; a uni-ball pen; a Pentel pen; a  
01:50:49 17 uni-ball vision pen, a different version of it; uni-ball gel  
01:50:56 18 pen. There's a Paper Mate Flair, of course, point felt --  
01:51:02 19 it's like a felt tip pen. And there's a Paper Mate Flair,  
01:51:07 20 plain, medium pen. And, there's Paper Mate Profile, which is  
01:51:11 21 actually a ballpoint pen.

01:51:15 22 Okay. So -- and so that's what, what's there in  
01:51:20 23 that.

01:51:20 24 Q Okay.

01:51:24 25 Mr. Willis asked you about other research that



01:51:26 1 you've done in the field of document, forensic document  
01:51:31 2 examination.

01:51:32 3 A Uh-huh.

01:51:33 4 Q Is this some of the research that you've done?

01:51:35 5 A Yeah. This is part of the E book. And what these are  
01:51:38 6 are actual pens. So these -- there's no question that these  
01:51:41 7 are pens. There's no inkjet here and there's no laser or  
01:51:46 8 anything else. It's just a pen that you can use. You can buy  
01:51:51 9 it and use it. And the question is what do they look like on  
01:51:55 10 paper.

01:51:57 11 Q Right. And within this exhibit, and the individual  
01:52:01 12 pages, you've made observations about each one of these  
01:52:05 13 different types of pens, correct?

01:52:07 14 A Uh-huh. Yes.

01:52:09 15 Q Is there anything that would, you know, help the Court  
01:52:14 16 understand the difference between the signature created by  
01:52:18 17 an inkjet printer and that of these different types of ink  
01:52:22 18 pens?

01:52:23 19 A Yeah. Yeah. And, uh -- so I just make notes. I make  
01:52:27 20 observations. And that little bounding box up there is a  
01:52:32 21 50X optical magnification.

01:52:35 22 Using that microscope, that very microscope there --

01:52:38 23 Q Now, just so the record is clear, Dr. Kelley, when you're  
01:52:42 24 referring to one of these pages, let us know specifically  
01:52:45 25 which page it is.

01:52:46 1 A This is the very first page. Its subtitle is Exhibit 17.

01:52:51 2 Q Okay.

01:52:52 3 A Sharpie thin pen ink analysis.

01:52:57 4 Q Okay. Go on.

01:52:57 5 MR. WILLIS: Your Honor, I object. This is  
01:52:59 6 outside the scope of cross.

01:53:00 7 MR. PANKOPF: It's right in the scope of cross  
01:53:02 8 because he asked about other research that he had done and  
01:53:05 9 where is it and --

01:53:05 10 THE COURT: Well, and that might be true, sir,  
01:53:07 11 but we have, really, no foundation of what -- who created  
01:53:11 12 these. Anything like that.

01:53:13 13 But, I -- I'm going to allow it because I know where  
01:53:16 14 you're going. And to be totally frank with you, I don't know  
01:53:18 15 that we need to go much further with this. I think I, I get  
01:53:23 16 what the argument is here.

01:53:26 17 MR. PANKOPF: Okay.

01:53:27 18 THE COURT: But I do think you need to lay some  
01:53:29 19 foundation as to how these were even created, if we're going  
01:53:34 20 to even hear anything about them.

01:53:35 21 MR. PANKOPF: Yes, Your Honor.

01:53:35 22 BY MR. PANKOPF:

01:53:36 23 Q Dr. Kelley, how were these pages in Exhibit 15 created?

01:53:39 24 A I went and I, uh -- down to Office Depot. I got a  
01:53:45 25 Sharpie pen. I wrote the name of the pen onto a piece of

01:53:49 1 paper. I took the paper back to -- made microscope photos of  
01:53:57 2 what, of what that pen did on the paper. And this is what it  
01:54:02 3 did.

01:54:03 4 And you can even see the blew line because we're  
01:54:07 5 using, like, a shorthand notebook. So, that's the blew line  
01:54:11 6 underneath there. The line I was writing on. So, that's an  
01:54:15 7 excerpt from the, you know, the description of the pen. So,  
01:54:22 8 it's a direct photo, made directly from the pen, writing on  
01:54:28 9 the paper.

01:54:28 10 Q Okay. And I was going to try to move this along, wrap  
01:54:32 11 it up.

01:54:32 12 A Yeah.

01:54:32 13 Q In these examples that you created, did you find any  
01:54:39 14 magenta anomalies within any of these ink pens that you, uh,  
01:54:47 15 created?

01:54:50 16 A I'll just take a look at them.

01:54:55 17 (Witness reviews documents.)

01:54:57 18 No. Looks like the ink is homogenous.

01:55:02 19 Q Did you discover any cyan satellites surrounding any of  
01:55:09 20 the writings that you made?

01:55:12 21 A There were none of the pens that I tested. And I did far  
01:55:16 22 more than the exhibits here. None of them produced satellite  
01:55:20 23 ink droplets and I distinguish -- I need to clarify something.

01:55:25 24 When there is a satellite ink droplet, I expect the  
01:55:30 25 color of that satellite to match the color of the ink pictured

01:55:35 1 here. So, you might see in this first exhibit here that  
01:55:37 2 there's some black dots there, I verified that those are  
01:55:40 3 black defects in the paper, so it is not ink. So, there's  
01:55:45 4 no satellites in this picture at all. And there are none in  
01:55:49 5 any of the pen pictures, including the ones that aren't blue.

01:55:54 6 Q Did you find any evidence of overspray?

01:55:58 7 A No.

01:56:03 8 MR. PANKOPF: Your Honor, I would like to move  
01:56:05 9 these into evidence.

01:56:08 10 THE COURT: Mr. Willis.

01:56:11 11 MR. WILLIS: Object on the basis of relevance.  
01:56:13 12 Lack of foundation.

01:56:17 13 THE COURT: I believe he's laid a sufficient  
01:56:19 14 foundation that Dr. Kelley is the one that created these. I'm  
01:56:23 15 going to go ahead and admit these into evidence.

01:56:26 16 And is there anything further, Mr. Pankopf?

01:56:28 17 (Whereupon, Exhibit 15 -- a document, was received  
01:56:29 18 in evidence.)

01:56:29 19 MR. PANKOPF: No, Your Honor. Thank you.

01:56:30 20 THE COURT: In light of that examination,  
01:56:33 21 Mr. Willis, do you have any short recross?

01:56:35 22 MR. WILLIS: Very brief, Your Honor, and it  
01:56:38 23 arises from one of the questions you put to the witness.

01:56:41 24 \\\

01:56:41 25 **RECROSS EXAMINATION**

01:56:42 1 BY MR. WILLIS:

01:56:42 2 Q Did I hear you correctly, doctor, that you say that  
01:56:46 3 you looked at Exhibits 3, 4 and 5 here today, and you found  
01:56:50 4 differences between those exhibits and what you looked at at  
01:56:53 5 my office?

01:56:57 6 A You know, which -- there's three documents there.

01:57:02 7 THE COURT: You know what, sir, let me hand him  
01:57:06 8 the documents so that way he can see what you're talking  
01:57:07 9 about.

01:57:07 10 THE WITNESS: I don't want to over-generalize.

01:57:10 11 MR. WILLIS: Okay.

01:57:11 12 THE COURT: That may have been my mistake as  
01:57:12 13 well?

01:57:12 14 BY MR. WILLIS:

01:57:13 15 Q Well, if I misheard you, you're more than welcome to  
01:57:15 16 clear up my confusion, but --

01:57:16 17 A I'm not sure what you heard, that's the problem, so I'm  
01:57:18 18 confused.

01:57:19 19 Okay. So I got the condominium rider here, the deed  
01:57:22 20 of trust, and the home equity documents that you produced, so.

01:57:30 21 Q Yes. But my question was in response to questions from  
01:57:32 22 Her Honor, did you say that you saw some differences in those  
01:57:35 23 exhibits, and the documents you looked at in my office on  
01:57:38 24 June 8th?

01:57:40 25 A Actually, what I meant to say is I saw some differences

01:57:44 1 between -- I'm not sure what you heard, but, for example,  
01:57:49 2 some of these doc -- your copies, didn't reproduce the staple  
01:57:55 3 holes. I mean, your own copies, the ones you made at your  
01:57:58 4 office.

01:57:58 5 Q Okay.

01:57:58 6 A So I wondering about that.

01:58:00 7 Q Okay. Your comment was limited to comparing --

01:58:03 8 A Yeah. Very specific.

01:58:04 9 Q -- documents 3, 4, 5 with 3-A, 4-A, 5-A. That's fine.

01:58:10 10 Is that a correct statement, that's --

01:58:11 11 A Yeah. Can you look at it and you'll see, for example --

01:58:13 12 Q You've answered my question, doctor.

01:58:16 13 Thank you.

01:58:16 14 A Okay.

01:58:17 15 MR. WILLIS: Thank you, Your Honor.

01:58:18 16 THE COURT: Thank you.

01:58:19 17 Sir, if I may have those documents back.

01:58:24 18 THE WITNESS: These ones? Okay. Yeah.

01:58:25 19 THE COURT: Thank you.

01:58:27 20 Before we go on, Mr. Pankopf, I know that you were  
01:58:30 21 present at the time these documents were reviewed in June  
01:58:33 22 of 2018, did you take a look at these documents at all when  
01:58:36 23 you were there, sir?

01:58:37 24 MR. PANKOPF: Yeah. I observed them. I didn't  
01:58:39 25 handle them.

01:58:40 1 THE COURT: You did not handle them at all?

01:58:42 2 MR. PANKOPF: To the best of my recollection is,  
01:58:44 3 yeah, I did not handle them.

01:58:45 4 THE COURT: Okay. Okay.

01:58:45 5 And just out of curiosity, can you tell me who else  
01:58:49 6 was present at the time that these were actually reviewed? I  
01:58:51 7 know that I read this before, but I can't recall as I'm  
01:58:55 8 sitting here.

01:58:55 9 MR. WILLIS: Uh, V.R. Bowman from our office in  
01:58:57 10 Las Vegas.

01:58:58 11 THE COURT: Okay.

01:58:59 12 MR. WILLIS: He is an associate attorney.

01:59:01 13 THE COURT: Okay. So it was Mr. Bowman,  
01:59:09 14 Mr. Pankopf, and Dr. Kelley.

01:59:11 15 Was there anybody else present?

01:59:13 16 MR. PANKOPF: The video recorder and the  
01:59:15 17 court reporter.

01:59:16 18 THE COURT: Okay. Oh. That's correct. Okay.

01:59:18 19 MR. PANKOPF: So I think it was a total of five  
01:59:21 20 of us.

01:59:22 21 THE COURT: Okay.

01:59:33 22 At this point, is there any other witnesses for the  
01:59:37 23 plaintiff?

01:59:38 24 MR. JOHANNESSEN: Yes, Your Honor.

01:59:39 25 THE COURT: Okay.

01:59:41 1 MR. JOHANNESSEN: Plaintiff calls

01:59:43 2 Ms. Jodi Hawkins.

01:59:47 3 THE COURT: Ms. Hawkins if you could -- sir,  
01:59:49 4 you're now excused.

01:59:50 5 At this point, may we release Dr. Kelley? We're not  
01:59:53 6 going to recall him for any purpose at this point?

01:59:56 7 MR. WILLIS: Your Honor, the only reluctance in  
01:59:59 8 saying yes to that is that we might, collectively, wish to  
02:00:04 9 consider whether or not to have Dr. Kelley take Exhibits 3, 4  
02:00:09 10 and 5, and confirm that they were the documents he examined  
02:00:13 11 in our office.

02:00:14 12 THE COURT: Okay. And I understand that, sir.

02:00:16 13 So, we will not be completing releasing you, sir.  
02:00:19 14 You may step down from the witness stand.

02:00:21 15 Ma'am, if you could come up and just stand where  
02:00:24 16 you're at and you'll be sworn.

02:00:24 17  
02:00:24 18 **JODI HAWKINS,**  
02:00:24 19 called as a witness on behalf of the Government,  
02:00:24 20 was sworn and testified as follows:

02:00:40 21 THE CLERK: Please be seated.

02:00:42 22 Please state your full name for the record, spelling  
02:00:46 23 your last name.

02:00:47 24 THE WITNESS: Jodi, J-o-d-i, Hawkins,  
02:00:51 25 H-a-w-k-i-n-s.

02:00:54 26 THE CLERK: Thank you. Please be seated.



02:00:57 1 Ma'am, just make sure the microphone is close to  
02:01:00 2 you. Speak directly into it.

02:01:01 3 THE WITNESS: Yes, ma'am.

02:01:02 4 THE COURT: Thank you.

02:01:03 5 Please go ahead.

02:01:05 6 MR. JOHANNESSEN: Your Honor, may I have some  
02:01:06 7 leeway in examining this witness? I don't want to call her a  
02:01:09 8 hostile witness, but under Rule 611(c), uh, so I'm able to ask  
02:01:14 9 some leading questions. She is associated to an adverse  
02:01:17 10 party.

02:01:17 11 THE COURT: Well, let's just get started and see  
02:01:19 12 where we go. And then we'll decide how we're going to handle  
02:01:22 13 that.

02:01:23 14 MR. JOHANNESSEN: Okay. Thank you, Your Honor.

02:01:24 15 **DIRECT EXAMINATION**

02:01:25 16 BY MR. JOHANNESSEN:

02:01:25 17 Q Good afternoon, Ms. Hawkins.

02:01:27 18 A Good afternoon.

02:01:28 19 Q Where do you work?

02:01:32 20 A I work for Wells Fargo Bank.

02:01:33 21 Q Okay. Can you be more specific?

02:01:35 22 A Where do I, physically, work?

02:01:38 23 Q No. For example -- the reason I'm asking is we've got  
02:01:41 24 Wells Fargo & Company, which is the parent umbrella company.  
02:01:45 25 And then we've got Wells Fargo Home Mortgage. We've got a

02:01:47 1 number of different Well Fargos, so that's why I'm asking,  
02:01:51 2 specifically, which company do you work for.

02:01:52 3 A I work for Wells Fargo Bank in the Home Equity  
02:01:56 4 Department.

02:01:56 5 Q Okay. Do you work for -- have you ever worked for  
02:02:01 6 Wells Fargo Home Equity Group?

02:02:02 7 A That is the group that I worked for is the Home Equity  
02:02:05 8 Group.

02:02:05 9 Q Okay. What is the difference between the Home Equity  
02:02:09 10 Group and the Wells Fargo N.A.?

02:02:10 11 A That's a group within Wells Fargo Bank. The Home Equity  
02:02:15 12 Group, the whole mortgage department, I mean there's different  
02:02:18 13 departments within Wells Fargo Bank, N.A.

02:02:21 14 Q Okay. And who writes your check? I'm not asking how  
02:02:27 15 much you get paid. Who writes your check?

02:02:29 16 A I get an auto-draft that's deposited into my checking  
02:02:33 17 account every day. I'm not handed a physical check.

02:02:37 18 Q Do you know who makes that deposit?

02:02:39 19 A Wells Fargo does.

02:02:40 20 Q Wells Fargo?

02:02:40 21 A N.A.

02:02:42 22 Q Okay. Have you ever been identified as a witness in any  
02:02:45 23 case before?

02:02:47 24 A I've been a witness in many cases.

02:02:50 25 Q In Nevada?

02:02:52 1 A Um, yes. I believe so.

02:02:54 2 Q How many?

02:02:55 3 A I don't know. A handful.

02:02:57 4 Q What's a handful? Six? 12?

02:03:00 5 A I've been to Las Vegas, maybe, two or three times. And  
02:03:03 6 I've been here twice. Maybe three times.

02:03:07 7 Q Okay. Have you ever testified in a case in Palm Beach,  
02:03:12 8 Florida?

02:03:12 9 A Uh, I've testified in many cases in Palm Beach.

02:03:16 10 Q So the answer is yes?

02:03:17 11 A Yes.

02:03:18 12 Q Okay. Have you ever been part of a witness list that was  
02:03:20 13 provided by Wells Fargo, as a witness to testify in another  
02:03:25 14 case anywhere?

02:03:26 15 A Yes.

02:03:27 16 Q In the Palm --

02:03:29 17 THE COURT: I don't mean to be rude, sir, but I  
02:03:31 18 need to find out what this is related to because the purpose  
02:03:34 19 of this hearing is to determine whether or not the documents  
02:03:37 20 at issue are, in fact, authentic or not, effectively. I  
02:03:42 21 mean -- actually, what's really at issue here is whether or  
02:03:45 22 not Wells Fargo, Snell & Wilmer, and three attorneys are  
02:03:49 23 subject to sanctions for having presented materially false  
02:03:52 24 information to the Court.

02:03:53 25 In that determination, is this question of whether

02:03:56 1 or not the documents that were presented are, in fact,  
02:03:59 2 forgeries, as opposed to authentic documents.

02:04:03 3 So, I'm not sure what the purpose of the line of  
02:04:05 4 questioning is that you have right now, so I'm going to ask  
02:04:08 5 you to get to the point, or at least give me some idea of  
02:04:12 6 where we're going so that I know that this is really relevant  
02:04:15 7 to what we're doing here today, sir.

02:04:18 8 MR. JOHANNESSEN: Well, for point of  
02:04:19 9 clarification, if I might ask the Court. In the November 6th  
02:04:21 10 hearing, you mentioned that the reason or the purpose for this  
02:04:24 11 hearing is -- Your Honor, I'm paraphrasing -- the reason for  
02:04:28 12 this hearing is to determine whether the expert opinion  
02:04:33 13 proffered by plaintiff is admissible. We're really not going  
02:04:38 14 to the weight of the evidence.

02:04:40 15 Is that correct.

02:04:40 16 THE COURT: Well, I think that's part of the  
02:04:41 17 question in the Motion For Sanctions because if there is not  
02:04:44 18 an expert opinion that can be admissible that shows that these  
02:04:48 19 documents are not authentic --

02:04:50 20 MR. JOHANNESSEN: Uh-huh.

02:04:50 21 THE COURT: -- then we're left with the question  
02:04:52 22 of are the documents true and authentic, which I think we're  
02:04:55 23 all going into that direction anyway, even though that's not  
02:05:00 24 entirely what's at issue because the Motion For Sanctions is  
02:05:03 25 really part and parcel of that.

02:05:05 1 MR. JOHANNESSEN: Yes.

02:05:05 2 THE COURT: But, again, I don't see how that's  
02:05:08 3 really different than what I just said. So, maybe I'm  
02:05:11 4 confused about --

02:05:13 5 MR. JOHANNESSEN: No. I'm not saying that at  
02:05:15 6 all, Your Honor.

02:05:15 7 THE COURT: Okay.

02:05:16 8 MR. JOHANNESSEN: It's just there's a witness  
02:05:17 9 who has been, until a couple weeks ago, didn't exist on  
02:05:23 10 record. And now we have somebody who has come up to testify  
02:05:27 11 and, apparently, she has been offered by Wells Fargo Bank,  
02:05:31 12 N.A., the defendant, as a custodian, of sorts, of the  
02:05:36 13 documents; for example, the deed of trust, the note. I'm  
02:05:40 14 trying to find out exactly which company she works for, which  
02:05:43 15 division, because if she doesn't work for a division that is  
02:05:46 16 the custodian of these -- charged with being the custodian of  
02:05:50 17 the originals, then she's not qualified to testify.

02:05:52 18 I'm just finding out exactly where -- if you can  
02:05:53 19 grant me some leeway, Your Honor. She just popped up a couple  
02:05:57 20 weeks ago.

02:05:57 21 THE COURT: Okay. But, now, we're talking about  
02:05:59 22 a witness list in a case in Palm Beach, Florida.

02:06:02 23 MR. JOHANNESSEN: Yes.

02:06:02 24 THE COURT: So I'm not sure how that relates to  
02:06:05 25 that.

02:06:05 1 MR. JOHANNESSEN: Because, Your Honor, I am  
02:06:06 2 unclear as to how Wells Fargo's organizational chart actually  
02:06:10 3 operates. And the Palm Beach, Florida -- all is -- it's  
02:06:14 4 marked as Exhibit 16, but Ms. Hawkins is named as one of 62  
02:06:18 5 witnesses in that case, and her, uh -- the company it says she  
02:06:23 6 works for is Wells Fargo Home Equity Group. We have other  
02:06:27 7 companies which are -- have equity in them. I'm not as clear  
02:06:31 8 as perhaps the Court is what -- particularly, Wells Fargo's  
02:06:36 9 witness works.

02:06:37 10 Is she's a custodian --

02:06:38 11 THE COURT: Well, I'm not sure how that would  
02:06:39 12 relate, at all, to the question of whether or not she could be  
02:06:42 13 the custodian of records to the documents we have at issue in  
02:06:45 14 this case, so --

02:06:47 15 MR. JOHANNESSEN: Let me -- I'll proceed with  
02:06:49 16 that in mind, Your Honor.

02:06:49 17 THE COURT: Okay.

02:06:51 18 And let me ask the defense. Were you intending to  
02:06:53 19 call her as a custodian --

02:06:54 20 MR. WILLIS: No.

02:06:54 21 THE COURT: Of record of these documents.

02:06:55 22 MR. WILLIS: No. We have not listed her as a  
02:06:57 23 custodian of records. We were not intending to call her at  
02:07:00 24 all. She is our client representative.

02:07:03 25 THE COURT: Okay. So if they're not calling

02:07:06 1 her as the custodian of records of these documents, then what  
02:07:10 2 purpose does this serve at this point?

02:07:13 3 MR. JOHANNESSEN: Well, Your Honor, on  
02:07:14 4 November 6th, they identified they would provide somebody  
02:07:18 5 who could testify as to custodian, custodianship over the  
02:07:22 6 records. And I'm assuming in response to that, they proffered  
02:07:26 7 Ms. Hawkins.

02:07:28 8 So I'm not --

02:07:29 9 THE COURT: They just stated they were not  
02:07:31 10 intending to call her for that purpose. So, maybe I should  
02:07:33 11 have found out from you before we called this witness what the  
02:07:36 12 purpose was of this testimony. But if she's not here to  
02:07:39 13 testify on behalf of the defense as a custodian of records,  
02:07:42 14 then whether or not she can or cannot be a custodian of  
02:07:46 15 records is irrelevant.

02:07:47 16 Unless I'm missing something.

02:07:49 17 MR. JOHANNESSEN: I don't think you're missing  
02:07:50 18 anything, Your Honor.

02:07:51 19 THE COURT: Okay.

02:07:51 20 MR. JOHANNESSEN: I, honestly, really don't  
02:07:53 21 think you're missing anything. It was just unclear -- and  
02:07:56 22 pardon me for the request for clarification back in the early  
02:08:00 23 part of the month, but it was unclear as to what this person  
02:08:02 24 is doing because we're talking all morning about what may be  
02:08:05 25 the original document, what may not be, copies, and copies of

02:08:09 1 copies.

02:08:09 2 THE COURT: Well, as I understand it --

02:08:11 3 MR. JOHANNESSEN: Yes, Your Honor.

02:08:12 4 THE COURT: Wells Fargo's position has always  
02:08:13 5 been, and continues to be, that these are the original  
02:08:15 6 documents. The only testified that has come in to say that  
02:08:20 7 they're not is the expert testimony and documents that were  
02:08:23 8 provided by Dr. Kelley and by Mr. Michaels, if I remember  
02:08:29 9 correctly. But without that witness, evidence and testimony,  
02:08:34 10 we're left with these are the original documents because  
02:08:37 11 that's the representations that are made by officers of this  
02:08:41 12 court --

02:08:42 13 MR. JOHANNESSEN: Uh-huh.

02:08:42 14 THE COURT: -- that I would expect to be telling  
02:08:44 15 the truth. So if that is not the case, and the question  
02:08:48 16 becomes whether or not this evidence is going to be admissible  
02:08:52 17 and considered, then we're left with the question of there is  
02:08:56 18 no other evidence to say that this isn't authentic and that  
02:09:00 19 these aren't originals.

02:09:02 20 Now, to be totally frank with everybody -- and maybe  
02:09:05 21 I should have been clear about this -- we really aren't here  
02:09:08 22 to figure out -- I mean, I don't see this as an issue of we're  
02:09:12 23 going to have testimony back and forth about the authenticity,  
02:09:14 24 necessarily, of the documents, because it's always been  
02:09:17 25 Wells Fargo's position that they are authentic and they



02:09:19 1 are the originals. The only evidence that contradicts that  
02:09:23 2 is what the plaintiff has put forward in its Motion For  
02:09:27 3 Sanctions. The motion has not been made for the Court to  
02:09:31 4 make a finding about these being original documents.

02:09:34 5 MR. JOHANNESSEN: I see.

02:09:34 6 THE COURT: And so maybe I'm not clear.

02:09:36 7 Mr. Willis, do you have anything to add?

02:09:40 8 MR. WILLIS: Uh, no, Your Honor.

02:09:43 9 THE COURT: Am I paraphrasing this -- that  
02:09:46 10 correctly?

02:09:46 11 And maybe I'm getting confused.

02:09:48 12 MR. WILLIS: I believe you are.

02:09:49 13 Our position is that in the event that Dr. Kelley  
02:09:54 14 is not qualified to offer expert testimony, then there is no  
02:09:58 15 evidence to support the allegation that these documents are  
02:10:01 16 not what they are, which is the original loan documents.

02:10:06 17 What follows from that would, necessarily, be a  
02:10:08 18 denial of the Motion For Sanctions. And then I think any  
02:10:11 19 proceedings after that we would have to determine, because  
02:10:14 20 the remand from the Ninth Circuit was not to -- a remand to  
02:10:19 21 have a full merits blown case related to the settlement  
02:10:23 22 agreement.

02:10:24 23 So I think you and I are on the same page, Your  
02:10:27 24 Honor.

02:10:27 25 THE COURT: Okay. And --

02:10:27 1 MR. JOHANNESSEN: And I may be a bit skewed from  
02:10:30 2 the same page. Pardon me, Your Honor.

02:10:31 3 It's -- the Ninth Circuit determined that Mr. Slovak  
02:10:34 4 did not get the benefit of his bargain, and part of his  
02:10:38 5 bargain was to obtain the original documents. And so, so  
02:10:41 6 I'm -- again, I don't mean to parse this, but this is -- I'm  
02:10:45 7 just being frank and candid with you my understanding of what  
02:10:49 8 happened so far, today, in the case, as far as what we're here  
02:10:53 9 for today on the request for sanctions. And what I've heard  
02:10:58 10 is there are varying degrees of what is -- for example, you  
02:11:04 11 have an original copy from the County Recorder, Washoe County  
02:11:09 12 Records Office, which purports to be the original deed of  
02:11:12 13 trust.

02:11:12 14 THE COURT: Which is a self-authenticating  
02:11:14 15 document under Rule 903, I believe.

02:11:17 16 MR. JOHANNESSEN: Correct.

02:11:18 17 So, that self-authenticates based on what the County  
02:11:21 18 Recorder provided to whomever, correct? That's -- but it,  
02:11:27 19 does not authenticate is that what was taken to the County  
02:11:30 20 Recorder's Office was a copy.

02:11:33 21 So, a copy could be taken to the County Recorder's  
02:11:35 22 Office -- for example --

02:11:36 23 THE COURT: Okay. So that's completely outside  
02:11:39 24 of what my understanding is of what we're doing here today.

02:11:42 25 MR. JOHANNESSEN: Okay.

02:11:42 1 THE COURT: So let me be clear again.

02:11:45 2 MR. JOHANNESSEN: Yes, ma'am.

02:11:45 3 THE COURT: The plaintiff has filed a Motion  
02:11:48 4 For Sanctions that alleges Wells Fargo lied to the Court when  
02:11:51 5 it said it had original documents. And the only evidence to  
02:11:55 6 support that that information is false is the expert testimony  
02:11:59 7 and witness that has been offered, at this point, by the  
02:12:03 8 plaintiff.

02:12:03 9 MR. JOHANNESSEN: Uh-huh.

02:12:04 10 THE COURT: If that testimony and information  
02:12:07 11 is not admissible, then we are left back with the idea that  
02:12:10 12 the only evidence in this case is that this is the original --  
02:12:15 13 these are the originals, as it's been represented by  
02:12:19 14 Wells Fargo. That might mean that we have to have a  
02:12:21 15 bifurcated hearing --

02:12:22 16 MR. JOHANNESSEN: Yes.

02:12:23 17 THE COURT: -- to then come back and decide that  
02:12:25 18 question. But, I see no evidence to support the idea that  
02:12:29 19 Wells Fargo, its attorneys, would be sanctioned if, in fact,  
02:12:34 20 Mr. Kelley -- or Dr. Kelley and Mr. Michael's evidence is not  
02:12:37 21 admissible.

02:12:38 22 MR. JOHANNESSEN: Understood.

02:12:39 23 THE COURT: But am I -- again, I'll go back to  
02:12:42 24 the defense. Am I missing something in that whole thing?

02:12:45 25 And a part of this has to with the with fact that I

02:12:48 1 wasn't the judge when all this stuff happened.

02:12:50 2 MR. JOHANNESSEN: I know.

02:12:50 3 THE COURT: So I'm here in sort of situation  
02:12:53 4 similar to you, sir, where we're reading the documents, but  
02:12:56 5 we weren't there for the hearings and everything that  
02:12:59 6 transpired. All we can do is read the transcripts.

02:13:02 7 But am I missing something, sir?

02:13:03 8 MR. WILLIS: I do not believe so, Your Honor.

02:13:05 9 MR. JOHANNESSEN: Then, Your Honor, that leads  
02:13:06 10 to my inquiry as to whether or not we would be having a  
02:13:09 11 bifurcated hearing. So, I'm not sure how that's going to  
02:13:13 12 work out. I'm taking the Court's lead, as I should be,  
02:13:16 13 Your Honor.

02:13:16 14 THE COURT: Well, I guess the question would  
02:13:18 15 become then, what evidence would there be that these aren't  
02:13:21 16 originals if, in fact, the testimony is not accepted?

02:13:24 17 MR. JOHANNESSEN: Well, Your Honor --

02:13:24 18 THE COURT: How would the plaintiff ever be able  
02:13:27 19 to prove, at that point, that they are not the originals?

02:13:32 20 MR. JOHANNESSEN: I, I don't want to be  
02:13:36 21 rhetorical and I don't mean to be, Your Honor, so --

02:13:38 22 THE COURT: And I'm not trying to sound  
02:13:40 23 flippant --

02:13:41 24 MR. JOHANNESSEN: No, no, you're not. It's a  
02:13:43 25 different inquiry because on November 6th when we had a

02:13:46 1 telephonic hearing, there was a question as to -- and you were  
02:13:48 2 very clear about the scope of the hearing, that it is based on  
02:13:51 3 this expert that plaintiff is proffering; that there will be a  
02:13:55 4 determination as to whether or not his opinion is admissible.  
02:13:58 5 But, it does not go to the authenticity of the documents. So  
02:14:01 6 my concern is that there would be somehow a default because  
02:14:05 7 let's say an expert -- whether it's admitted or not, and the  
02:14:09 8 Court looks at the admissibility first, and then looks at the  
02:14:13 9 weight, and the default is because there is no evidence at  
02:14:17 10 this point in these proceedings -- and there is a collateral  
02:14:21 11 matter of sanctions. If I'm being unclear --

02:14:24 12 THE COURT: Well, let me ask you this, sir.

02:14:25 13 MR. JOHANNESSEN: Yes, ma'am.

02:14:26 14 THE COURT: If this court rejects your client's  
02:14:30 15 experts that these are, in fact, forgeries, is your client  
02:14:33 16 going to continue to contest the authenticity of these  
02:14:37 17 documents?

02:14:40 18 MR. JOHANNESSEN: With a clarification. I know  
02:14:42 19 -- and you expect and you deserve a yes or no answer, but I  
02:14:46 20 can't do that yes or no. I believe the testimony is that  
02:14:50 21 there -- I understand the questioning, the line of questioning  
02:14:51 22 by counsel that forgery, forgery, forgery, which is different  
02:14:54 23 from whether they're a copy or not. But, yes, if there is  
02:14:58 24 a -- if the question is not about the sanction, about the  
02:15:00 25 admissibility, yes, those documents will be examined to

02:15:05 1 determine whether or not they are authentic for the main  
02:15:08 2 case in chief -- not for the purposes of a sanction motion, a  
02:15:14 3 Rule 11 sanction motion.

02:15:17 4 THE COURT: Just a moment.

02:15:27 5 As I understand it, the parties, on remand,  
02:15:33 6 indicated, from Wells Fargo's perspective, that they had the  
02:15:37 7 original documents and they were prepared to provide them to  
02:15:40 8 the plaintiff in exchange for the \$280,000 that he agreed to  
02:15:43 9 in the settlement. The response to that was, no. I'm not  
02:15:48 10 sure these are originals, so I want to have them examined  
02:15:53 11 first, to which the Court said, okay.

02:15:56 12 At that point, they were examined and Mr. -- or  
02:16:00 13 Dr. Kelley determined, in his opinion, that these were copies,  
02:16:04 14 that they were not the originals. And as I recall reading  
02:16:08 15 through these filings, that is exactly what was said, is that  
02:16:12 16 these are, effectively, forgeries.

02:16:14 17 Just a second, Mr. Pankopf.

02:16:17 18 We are now here because a Motion For Sanctions was  
02:16:20 19 filed --

02:16:21 20 MR. JOHANNESSEN: I understand.

02:16:22 21 THE COURT: -- because of that allegation, with  
02:16:24 22 the idea that Wells Fargo and its attorneys personally lied  
02:16:29 23 to this court -- which I take, like I said already, very  
02:16:34 24 seriously.

02:16:35 25 MR. JOHANNESSEN: Of course.

02:16:35 1 THE COURT: So if this Court finds that  
02:16:37 2 Dr. Kelley's opinion is not admissible, and that it rejects  
02:16:42 3 his opinions, then we're left back with the same place where  
02:16:46 4 we were before.

02:16:48 5 MR. JOHANNESSEN: Uh-huh.

02:16:48 6 THE COURT: I'm not sure I understand, at that  
02:16:51 7 point, why there would need to be any further examination  
02:16:56 8 because that's exactly what you already got.

02:17:01 9 Right? Did plaintiffs not hire an expert to do an  
02:17:04 10 examination of these documents?

02:17:06 11 MR. JOHANNESSEN: Correct.

02:17:06 12 THE COURT: Okay. So let's go on -- forward  
02:17:13 13 this way --

02:17:14 14 MR. JOHANNESSEN: Okay.

02:17:15 15 THE COURT: -- this hearing is specific to that.  
02:17:18 16 But at end of the day, if that evidence is gone, there is no  
02:17:23 17 other evidence that these are not originals and that these  
02:17:26 18 documents are not authentic. There are affidavits that do  
02:17:30 19 show the chain of custody leading up to those documents being  
02:17:34 20 proffered and provided for Dr. Kelley, Mr. Pankopf to review.

02:17:38 21 MR. JOHANNESSEN: Uh-huh.

02:17:39 22 THE COURT: So, there really isn't a lot of  
02:17:42 23 question about where they were.

02:17:44 24 I have never heard, and it is the first time I'm  
02:17:47 25 hearing that now the allegation is not simply that after they

02:17:51 1 were recorded they were copied; but, rather, before they were  
02:17:55 2 recorded, somebody went in and made copies and, therefore,  
02:17:59 3 these aren't the originals that were filed.

02:18:02 4 MR. JOHANNESSEN: We're -- may I say something,  
02:18:05 5 Your Honor?

02:18:06 6 THE COURT: Tread lightly, sir.

02:18:08 7 MR. JOHANNESSEN: I will. Absolutely, Your  
02:18:08 8 Honor.

02:18:11 9 Again, I don't -- we have a document that is  
02:18:15 10 presented as an original. Let's say the deed of trust.

02:18:19 11 THE COURT: Uh-huh.

02:18:20 12 MR. JOHANNESSEN: That deed of trust was,  
02:18:22 13 purportedly, recorded.

02:18:25 14 Now, if we get a document back from the County  
02:18:28 15 Records Office, it has bar codes on it, has some writing  
02:18:31 16 about APN, uh, typewriter -- pardon me -- typewriter,  
02:18:36 17 whatever.

02:18:36 18 Okay. What we have -- what we can say, I guess  
02:18:40 19 at the end of the day, at the end of the day for purposes of  
02:18:43 20 this particular matter, is that these documents came from the  
02:18:47 21 county recorder -- was recorded with the County Recorder.  
02:18:51 22 But, that doesn't mean -- my understanding is Mr. Slovak is  
02:18:55 23 sitting in a title company signing documents. Those documents  
02:18:58 24 are given to the title company, delivered to -- or a escrow  
02:19:02 25 company -- delivered to a runner, whatever, they go to record



02:19:06 1 in Washoe County Recorder's Office; or, which is more likely,  
02:19:09 2 because of what my familiarity is with the way banks work, is  
02:19:13 3 they go back to the office. They get all the documents. They  
02:19:17 4 scan it. They copy it. Put it in a digital form. And then,  
02:19:20 5 put the originals in a collateral file.

02:19:23 6 Then what they do is there's a five-day lag. We got  
02:19:27 7 April 19, 2002, when Mr. Slovak was sitting in the title  
02:19:30 8 company signing these documents. April 24, five days later,  
02:19:34 9 somebody from Wells Fargo -- and I'm going to use that Wells  
02:19:37 10 Fargo N.A. -- somebody from Wells Fargo takes -- prints out  
02:19:41 11 that digital copy that they scanned, grabs it, gives it to  
02:19:44 12 recorder, said go down and record this.

02:19:46 13 Now, is the document an original that was recorded?  
02:19:50 14 No. It's a copy.

02:19:51 15 But is the copy that comes back, is -- does the  
02:19:54 16 document that comes back, for example, in court here, is  
02:19:56 17 that the original? It is what was recorded, but it doesn't  
02:20:01 18 necessarily follow that it was the -- that it wasn't a copy  
02:20:05 19 that was recorded.

02:20:07 20 And I'm -- if I'm not making any -- to me, it  
02:20:10 21 makes sense to me that that's what banks do. I'm not saying  
02:20:14 22 somebody is forging something. That's not what I'm saying.  
02:20:17 23 What I'm saying is somebody could have taken a copy to get it  
02:20:21 24 recorded as opposed to the original. And the only original  
02:20:24 25 that I have seen -- again, Your Honor, I'm like you. I'm kind

02:20:27 1 of new to this case. But, the only original that I have been  
02:20:28 2 looking for is what did Mr. Slovak sign in the title company?  
02:20:33 3 Where is that document?

02:20:34 4 Are you asking -- has that been produced yet?

02:20:37 5 I don't think it has. I haven't seen it.

02:20:40 6 THE COURT: And the only evidence to support  
02:20:42 7 that is what's been proffered by your expert.

02:20:49 8 MR. JOHANNESSEN: It's my understanding the  
02:20:51 9 expert is opining as to whether or not that was a copy and,  
02:20:55 10 therefore, he didn't -- he was not able to examine the  
02:20:59 11 original. And what was supposed to be produced was the  
02:21:03 12 original, but it wasn't produced for him to review and to  
02:21:07 13 examine.

02:21:09 14 I'm not, Your Honor --

02:21:11 15 THE COURT: And Wells Fargo's position has been,  
02:21:13 16 from the beginning of this, on remand --

02:21:15 17 MR. JOHANNESSEN: Yes.

02:21:15 18 THE COURT: -- that these are the originals.

02:21:17 19 MR. JOHANNESSEN: I agree with that. I agree  
02:21:18 20 that that has been their position.

02:21:21 21 THE COURT: And so without any evidence to the  
02:21:23 22 contrary, where would that leave us?

02:21:29 23 MR. JOHANNESSEN: Oh, I don't think just because  
02:21:30 24 there's a negative you can prove the positive in this sa --  
02:21:32 25 respectfully, Your Honor, for example, Ms. Dove submitted a

02:21:36 1 declaration -- I think it was Exhibit J to their response  
02:21:39 2 to the Motion For Sanctions -- where she identified -- and  
02:21:44 3 I've -- until this morning, I haven't met Miss Dove. But in  
02:21:50 4 her declaration, she says the original note -- she came into  
02:21:55 5 possession of the original note. But when she identifies the  
02:21:59 6 deed of trust, it's not identified as original.

02:22:01 7 I mean, why not? I mean that's something I wanted  
02:22:04 8 to ask the custodian of records, or whatever -- if she's  
02:22:08 9 involved in this transportation of these documents, because  
02:22:11 10 I don't want to call Ms. Dove as a witness. Because it's  
02:22:14 11 unclear to me. I've never done that before. That's why I'm  
02:22:18 12 having trouble with this.

02:22:19 13 THE COURT: Well, it's curious because you filed  
02:22:21 14 a Motion For Sanctions against her.

02:22:25 15 MR. JOHANNESSEN: Um -- oh, the Rule 11?

02:22:28 16 THE COURT: To file a Motion For Sanctions  
02:22:30 17 against an attorney, and then show some hesitation to actually  
02:22:33 18 call them as a witness? I guess I'm having a hard time  
02:22:37 19 understanding why that would be so bad.

02:22:39 20 MR. JOHANNESSEN: It's, it's, uh -- it's just  
02:22:45 21 something I've never done. I've been practicing over  
02:22:49 22 30 years. And I know it's highly disruptive --

02:22:52 23 THE COURT: Well, I've been practicing a long  
02:22:54 24 time and I can tell you that I have very rarely seen motions  
02:22:56 25 for sanctions filed.

02:22:58 1 MR. JOHANNESSEN: And also, Your Honor, it's my  
02:22:59 2 understanding, again, we are -- we both -- I assume we both  
02:23:02 3 share the same duration of time involved in this case, but if  
02:23:11 4 -- the Motion For Sanctions, as I read it, is a motion for  
02:23:15 5 sanctions based on, basically, three grounds: One, Rule 11;

02:23:19 6 One via inherent authority of the Court to do that  
02:23:22 7 and to control its own proceedings before it; and

02:23:26 8 A U.S. code section which talks about whether or not  
02:23:30 9 something has been produced or not.

02:23:34 10 And I'm not sure -- the latter two don't have  
02:23:38 11 anything to do with the Rule 11, I don't think. A Rule 11  
02:23:41 12 is a specific provision in the Federal Rules of Civil  
02:23:45 13 Procedure which talks about the -- well, you know what it  
02:23:47 14 talks about.

02:23:48 15 I'm just trying to get a handle on exactly what  
02:23:51 16 this hear -- what the scope of this hearing is because we're  
02:23:54 17 talking about a lot of things which appear to be leaning  
02:23:57 18 toward some type of finding or conclusion that what was  
02:24:02 19 produced on June 8th was or was not the original. But, that's  
02:24:10 20 not what the witness has been testifying. He's making an  
02:24:13 21 opinion based on signatures and initials on documents. And  
02:24:17 22 those can't --

02:24:17 23 THE COURT: That was the opinion provided by  
02:24:19 24 your witness.

02:24:19 25 MR. JOHANNESSEN: Yes.

02:24:20 1 THE COURT: In his report.

02:24:21 2 MR. JOHANNESSEN: Yes.

02:24:22 3 THE COURT: For the context which your motion  
02:24:25 4 states that, at best, these are copies, at worst these are  
02:24:30 5 fabricated forgeries. That's on page 10, lines 1 and 2 of  
02:24:34 6 document 218.

02:24:35 7 MR. JOHANNESSEN: I understand that.

02:24:36 8 THE COURT: So the scope of this hearing is  
02:24:38 9 based on your motion. That's the reality. We're here because  
02:24:42 10 of your motion, not because of the defense's motion, but  
02:24:45 11 because of your motion. And I should -- when, when I say  
02:24:47 12 "your motion," I mean the plaintiff.

02:24:49 13 MR. JOHANNESSEN: So, Your Honor --

02:24:50 14 THE COURT: The question is --

02:24:50 15 MR. JOHANNESSEN: Yes.

02:24:51 16 THE COURT: -- whether or not there's any  
02:24:52 17 evidence to support that motion. And that motion is based  
02:24:55 18 upon the allegation that this expert has provided information  
02:25:00 19 to show that these are not original documents.

02:25:02 20 We can argue back and forth whether they're  
02:25:05 21 forgeries or documents -- or forgeries or whether they're  
02:25:08 22 copies. But at the end of the day, the question is are these  
02:25:12 23 the original documents? Because that's what Wells Fargo has  
02:25:14 24 represented, that's what the Court was under the impression  
02:25:18 25 they were, and that's what Mr. Pankopf in his motion said they

02:25:21 1 did not provide.

02:25:22 2 Right?

02:25:23 3 MR. JOHANNESSEN: I believe so.

02:25:24 4 THE COURT: Is that correct, Mr. Willis?

02:25:25 5 MR. WILLIS: Yes, Your Honor.

02:25:27 6 THE COURT: Okay.

02:25:27 7 So at the end of the day, what the scope will  
02:25:30 8 be is whether or not that evidence supports the conclusions,  
02:25:37 9 and whether or not that's going to be admitted. And if it's  
02:25:40 10 not admitted, the Motion For Sanctions is going to be denied,  
02:25:44 11 but then we're left with where we all started; which is,  
02:25:47 12 Wells Fargo has acknowledged, or stated that these are the  
02:25:50 13 originals. And I guess, at that point, we'll decide how  
02:25:54 14 we'll proceed. Because I'll be totally frank with everybody,  
02:25:57 15 I think at some point, even if you had a settlement, maybe we  
02:26:01 16 don't have a settlement anymore. Because if all you're going  
02:26:03 17 to do is litigate and litigate and litigate, I guess we can  
02:26:07 18 decide how we proceed from that point because, at this point,  
02:26:11 19 it seems to me that there's been enough litigation already,  
02:26:14 20 that we could have tried this case three times over. I  
02:26:18 21 mean, that's just my opinion, again looking at this from  
02:26:21 22 an outsider's point of view.

02:26:24 23 MR. JOHANNESSEN: Yes, Your Honor.

02:26:25 24 THE COURT: So going back to this witness, which  
02:26:27 25 is where we're at, if the question is whether or not this

02:26:30 1 witness, your witness, and his testimony and opinions are  
02:26:34 2 admissible and, thus, support the Motion For Sanctions, I'm  
02:26:38 3 not sure what this witness is here to add, other than if  
02:26:42 4 she were going to testify as a custodian of records as to  
02:26:45 5 the chain of custody of the documents that Wells Fargo claims  
02:26:48 6 are originals.

02:26:49 7 And Wells Fargo is saying we're not calling that  
02:26:51 8 witness because -- I presume Wells Fargo has taken the  
02:26:55 9 position that that's really not what's at issue, which is,  
02:26:57 10 essentially, what I thought my understanding was and your  
02:27:01 11 understanding was as well. And again, maybe this is all my  
02:27:04 12 fault. And I apologize to everybody in the room --

02:27:06 13 MR. JOHANNESSEN: I'm not --

02:27:07 14 THE COURT: I'm new at this. I'm just trying  
02:27:09 15 to get to the truth. That's really all I want, is to try to  
02:27:12 16 rule on this motion as best as I can. And the last thing I  
02:27:16 17 want to do is to give short shift to a Motion For Sanctions  
02:27:20 18 because, to the plaintiff's credit, if they truly believe  
02:27:23 19 that, it's very serious to the plaintiff. But, I can see,  
02:27:27 20 sitting on the other side of the Courtroom, how very serious  
02:27:30 21 it would be if I were the attorney sitting over there, having  
02:27:32 22 been accused of what they've been accused of.

02:27:35 23 MR. JOHANNESSEN: And I agree with you.

02:27:36 24 Your Honor, and --

02:27:37 25 THE COURT: Okay. So, with that, do we need to

02:27:39 1 continue with this witness?

02:27:48 2 MR. JOHANNESSEN: Maybe a few questions, Your  
02:27:50 3 Honor.

02:27:50 4 THE COURT: Okay.

02:27:51 5 **DIRECT EXAMINATION (resumed)**

02:27:51 6 BY MR. JOHANNESSEN:

02:27:52 7 Q Hi, Ms. Hawkins. I apologize for that, but I appreciate  
02:27:57 8 the Court's candor and clarification.

02:28:03 9 Were you ever in possession of a deed of trust  
02:28:07 10 that Wells Fargo believes is an original document -- not  
02:28:13 11 just something was recorded with the Washoe County Recorder's  
02:28:17 12 Office, but something that's an original document? In other  
02:28:20 13 words, Mr. Slovak's original writing.

02:28:25 14 A I don't know if I understand your question.

02:28:26 15 Q Let me --

02:28:27 16 A Have I ever been in possession of any deed of trust?

02:28:29 17 Q No. The deed of trust we're talking about in this case.

02:28:32 18 A No. I've never been -- it's never been in my possession.  
02:28:35 19 The original deed of trust has never been in my --

02:28:38 20 Q Okay. Do you know, uh, where deeds of trust are -- if  
02:28:42 21 they are original -- are stored?

02:28:44 22 A Yes.

02:28:44 23 Q And where is that?

02:28:45 24 A Billings, Montana.

02:28:47 25 Q Okay. Weren't they -- didn't they used to be in Texas,



02:28:50 1 when it was Wachovia, before Bank of America -- or Wells Fargo  
02:28:56 2 N.A.? Weren't they in San Antonio?

02:28:59 3 A We do have original documents in San Antonio, but this  
02:29:03 4 particular loan, which is a home equity line of credit, are  
02:29:06 5 housed in Billings, Montana.

02:29:08 6 Q And have you ever seen the original?

02:29:10 7 A Yes.

02:29:10 8 Q And when did you first see the original?

02:29:12 9 A Um, this morning.

02:29:14 10 Q Do you know how the attorneys for Wells Fargo Bank, N.A.,  
02:29:21 11 the defendant in this case, came into possession of the  
02:29:24 12 original?

02:29:24 13 A Wells Fargo sent the originals to the attorneys.

02:29:27 14 Q When you say "Wells Fargo," who is that?

02:29:30 15 A The bank.

02:29:32 16 I mean, I don't know what you're talking about.  
02:29:34 17 Wells Fargo, that owns this loan that we're talking about  
02:29:39 18 today, pulled the originals off the shelf in Billings,  
02:29:43 19 Montana, and mailed them to our attorney's office when they  
02:29:46 20 requested them.

02:29:47 21 Q How long ago was that, do you know?

02:29:47 22 A Um --

02:29:52 23 Q Like within the last month?

02:29:54 24 A No. The note was sent, I believe sometime in 2014. The  
02:29:58 25 deed of trust was sent May of this year, I believe.

02:30:05 1 Q And the deed of trust and the note were sent in 2014 from  
02:30:10 2 Wells Fargo N.A., Wells Fargo Bank, N.A., to whom?

02:30:15 3 A No. In 2014, the note -- the line of credit agreement --  
02:30:19 4 excuse me --

02:30:19 5 Q Okay.

02:30:19 6 A -- was sent to our attorney's office.

02:30:23 7 Q The attorneys who are representing here today?

02:30:26 8 A Yes.

02:30:26 9 Q Okay. And then the deed of trust?

02:30:27 10 A Was sent to them, I believe in May of 2018.

02:30:31 11 Q And where is that deed of trust now?

02:30:35 12 A Um, I, I don't know. It's been around this courtroom  
02:30:40 13 today. I believe she has them, but I'm not sure.

02:30:43 14 Q Okay. Can you, can you give me, uh -- so you're not the  
02:30:53 15 custodian of the original deed of trust?

02:30:55 16 A No.

02:30:56 17 Q Okay. And Wells Fargo Bank, N.A., your contention is  
02:31:02 18 that it is the custodian of that deed of trust, the original  
02:31:06 19 deed of trust?

02:31:07 20 A I'm not here to testify to anybody being the custodian.  
02:31:10 21 I was just here, brought here to testify that Wells Fargo Bank  
02:31:14 22 was in possession from the time that they received them at the  
02:31:17 23 origination, to the time that we sent them to our attorney's  
02:31:21 24 office. That's all I'm here to testify to.

02:31:23 25 Q So is it a fair statement to say that what was produced

02:31:27 1 for examination on June 8th, which is a month after the May  
02:31:30 2 date you provided, as far as when the deed of trust was sent  
02:31:33 3 to your attorneys, that what was presented for examination on  
02:31:36 4 June 8th of this year, you don't know whether that was the  
02:31:39 5 original or not?

02:31:40 6 A I wasn't present, so I don't know what was reviewed.

02:31:43 7 Q Has -- is -- are Wells Fargo's attorneys still in  
02:31:49 8 possession of the original?

02:31:50 9 A Again --

02:31:51 10 Q Deed of trust.

02:31:52 11 A Again, I think the judge has the original documents right  
02:31:55 12 this second, so I can't say that my attorneys are in physical  
02:31:59 13 possession of them right this second. I don't know where  
02:32:02 14 they're at in this courtroom.

02:32:03 15 Q But is it -- it's -- it seems to be a disconnect. And  
02:32:08 16 enlighten me. I would appreciate that. Because as the Court  
02:32:11 17 has mentioned, it's, uh -- we're new to this.

02:32:16 18 Before June 8, 2018, when the examination took  
02:32:22 19 place, you don't have any personal knowledge as to where that  
02:32:25 20 -- the originals were, correct, either the deed of trust or  
02:32:29 21 the promissory note, or the note?

02:32:31 22 A Part of the system of record that I reviewed prior to  
02:32:33 23 coming here today, Wells Fargo Bank was in possession of the  
02:32:38 24 original documents. They were at some point -- I don't  
02:32:42 25 remember the exact month and year -- they were sent to our

02:32:46 1 attorney's office. I mean, besides that -- I mean, I don't  
02:32:52 2 know what else to say. I mean, we've had them. We sent them  
02:32:55 3 to our attorney's office, and they were brought here today for  
02:32:58 4 the hearing.

02:32:59 5 Q Is it common practice for deeds of trust, the original  
02:33:03 6 documents, to be kept at an attorney's office for, what, nine  
02:33:09 7 months now?

02:33:12 8 A Um, well, we're in, what, November? And I believe they  
02:33:15 9 were sent in May. I don't know if that's nine --

02:33:18 10 Q Six -- what's that -- okay. You're correcting me then.  
02:33:20 11 Six months. Let's say six months.

02:33:21 12 A Six months, I guess.

02:33:22 13 I mean, we're in the process of litigation. If  
02:33:25 14 they request them, they had to be present for somebody's  
02:33:28 15 inspection. So, yes, I mean, as long as they need them -- I  
02:33:32 16 mean, they had to be here in court today. We're not going  
02:33:35 17 to have them -- mail them back and forth, you know, 15 times.  
02:33:39 18 That's not how it works.

02:33:40 19 Q So is it fair to say that since May of this year, 2018,  
02:33:43 20 and since -- what was the date you had in 2014 for the note?

02:33:46 21 A I don't remember the exact month.

02:33:49 22 Q But is it fair to say that when those documents left  
02:33:53 23 Wells Fargo N.A. in Billings, Montana?

02:33:55 24 A Yes.

02:33:56 25 Q And were sent to the attorneys in -- was it Las Vegas?

02:33:59 1 A Uh, I don't remember the exact address. I just know they  
02:34:02 2 were sent.

02:34:03 3 Q Is it fair to say that your, Wells Fargo's attorneys have  
02:34:05 4 been in possession of that, what was purported to be the  
02:34:09 5 original note, since 2014, and the original deed of trust,  
02:34:13 6 purported original deed of trust, since May of this year?

02:34:16 7 A Yes.

02:34:16 8 Q So you don't know whether what was produced for  
02:34:20 9 examination is the original or not?

02:34:22 10 A I wasn't there, so I don't know what was looked at.

02:34:24 11 Q And likewise, you don't know if what was presented today  
02:34:28 12 in court was the original or not?

02:34:30 13 A Um, it is my understanding that it should be. I mean, it  
02:34:33 14 was what the -- Wells Fargo Bank pulled off the shelves and  
02:34:36 15 sent to our attorney's office, and our attorney's office has  
02:34:40 16 been in possession. I mean, that's all I can say.

02:34:43 17 Q Who follows that, that line, that chain of custody, for  
02:34:46 18 example, since 2014, Billings, Montana -- let's go back to  
02:34:49 19 2002 when these were signed. How does that chain of custody  
02:34:52 20 work with Wells Fargo, N.A.?

02:34:55 21 A I don't know what you mean. I don't know what you're  
02:34:57 22 asking.

02:34:57 23 Q Well, Mr. Slovak went into a title company in April  
02:35:02 24 of 2002, signed some -- a deed of trust, signed a note. From  
02:35:07 25 there -- that was in April 2002 -- to where we are today, if

02:35:11 1 you needed to, you could determine what the chain of custody  
02:35:14 2 was between when the document was signed, the original, with  
02:35:17 3 the original writing, and today?

02:35:20 4 A Wells Fargo tracks where the original documents are.  
02:35:26 5 So from the time we received them, after they are signed,  
02:35:30 6 wherever they're signed -- it varies on states -- after we  
02:35:33 7 receive them, they're logged into our system. And every time  
02:35:37 8 you pull them, whether you just want to look at them or you  
02:35:39 9 have to send them somewhere, that's tracked in our system of  
02:35:43 10 record.

02:35:43 11 So, we have been in possession of the original  
02:35:45 12 documents from the time we received them, after closing,  
02:35:48 13 until we sent them to our attorney's office. They've never  
02:35:53 14 moved out of Wells Fargo's possession besides sending them  
02:35:57 15 to our attorney's office.

02:35:58 16 Q But you don't have personal knowledge of that?

02:36:00 17 A Well, I reviewed our system of record. My knowledge  
02:36:03 18 is based on my review of the bank's records.

02:36:06 19 Q What is a system of records? Can you describe what that  
02:36:10 20 is?

02:36:10 21 A That's the records that Wells Fargo Bank has in order to  
02:36:15 22 track the original documents.

02:36:16 23 Q So Wells Fargo has records where April 2002, document  
02:36:23 24 signed. November 28, 2018, what purports to be the original  
02:36:28 25 here in court, Wells Fargo Bank, N.A. keeps records of the

02:36:33 1 travel from April of 2002 to November 2018. You have some  
02:36:40 2 type of -- Wells Fargo Bank, N.A. has some type of log that  
02:36:44 3 keeps track of this, is that correct?

02:36:46 4 A We have a log of when we receive them, send them to the  
02:36:50 5 attorney's office, and when we receive them back from the  
02:36:54 6 attorney's office. That's the log that we have.

02:36:58 7 While the attorney's office has it, no, we have no  
02:37:00 8 log of that. We have when we receive them after origination,  
02:37:05 9 if we pull them off the shelves and have to send them to our  
02:37:08 10 attorney's office, that's logged in there. When we receive  
02:37:11 11 them back from our attorney's office, that's also logged in  
02:37:14 12 there.

02:37:14 13 When it's at the attorney's office, no, we have no  
02:37:17 14 log of that. We -- I mean, it's in their possession. It's  
02:37:20 15 not in our possession.

02:37:21 16 Q Did they only go to one attorney's office?

02:37:24 17 A Per the records that I reviewed, they were sent to only  
02:37:28 18 the law offices that are here today. There was no other  
02:37:31 19 attorney.

02:37:32 20 Q And the law office, to your knowledge, the law offices  
02:37:34 21 that are here today are just one firm?

02:37:37 22 A What their firm consists of, I mean, I don't know. I  
02:37:42 23 mean, there's multiple attorneys, so I don't know where your  
02:37:45 24 going with that. I mean, I don't know if they have multiple  
02:37:47 25 branches. I don't know how that works.

02:37:49 1 Q Well, there was another -- there was a mediation that  
02:37:52 2 occurred in the past and it went to another attorney's office  
02:37:55 3 as well. That's why I'm asking if you know about that.

02:37:57 4 A Did what go to the attorney's office?

02:38:00 5 Q The promissory note and deed of trust.

02:38:02 6 A Well, I have no recollection of that. I don't know  
02:38:06 7 that.

02:38:06 8 Q If -- okay. Let me make this -- it seems like -- and  
02:38:11 9 again, the Court is 100 percent right. We have officers  
02:38:16 10 of the Court who are representing that original note, the  
02:38:19 11 original deed of trust were produced June 8th. We have that.

02:38:25 12 Is it possible -- I mean, do you, do you know  
02:38:30 13 whether Wells Fargo provides their attorneys with documents  
02:38:35 14 which may not be the originals, but they are represented as  
02:38:38 15 being the originals, so you have an attorney who comes into  
02:38:42 16 court and says here are the originals?

02:38:44 17 A Um, to my knowledge, the bank has never sent any  
02:38:48 18 documents that we purport to be originals that aren't  
02:38:52 19 originals. I've been doing that for quite some time and I've  
02:38:57 20 never heard of that.

02:38:57 21 Q And you know for certain that that's happened in this  
02:38:59 22 case?

02:38:59 23 A That that's happened in this case? I don't believe that  
02:39:03 24 has happened in this case.

02:39:05 25 Q Okay.



02:39:10 1 Ms. Dove, in her declaration, identifies the note as  
02:39:13 2 the original note. In her declaration, she also -- this is  
02:39:18 3 Exhibit J to the response to the Motion For Sanctions --

02:39:21 4 THE COURT: And I'm not sure how this witness  
02:39:23 5 could testify to what's in someone else's declaration.

02:39:27 6 MR. JOHANNESSEN: Well, let me --

02:39:28 7 BY MR. JOHANNESSEN:

02:39:28 8 Q It's your understanding that the original note went to  
02:39:31 9 Ms. Dove, correct?

02:39:33 10 A The original note was sent to the attorney's office.  
02:39:36 11 To whose attention that was, and who within the law office  
02:39:40 12 actually grabbed it from the FedEx person or UPS, or whoever  
02:39:44 13 it was, I have no idea. I wasn't there.

02:39:46 14 Q Okay. And if I were to ask Wells Fargo Bank, N.A. in  
02:39:51 15 Billings, Montana, to provide me with a log of how the  
02:39:54 16 original documents travelled from April 2002 to November 2018,  
02:39:59 17 Wells Fargo, of course, they're keeping track of all this, so  
02:40:02 18 they would be able to provide all that, correct?

02:40:04 19 A I mean, we have those records. Whether our attorney  
02:40:07 20 advises us to produce those or the court requires us to  
02:40:12 21 produce those, that's out of my hands. I told you that we  
02:40:16 22 have a record that tracks where the original docs are, whether  
02:40:20 23 that's in our possession or we sent them to outside counsel.  
02:40:23 24 Whether we will produce those, I mean, I can't testify to  
02:40:25 25 that.

02:40:25 1 Q I understand that. I guess my -- I'm sorry if I wasn't  
02:40:28 2 clear.

02:40:30 3 From what I understand from your testimony, there  
02:40:32 4 is a log, or something, that Wells Fargo Bank, N.A., out of  
02:40:39 5 Billings, Montana, tracks where the document originated and  
02:40:43 6 how it traveled through the system, to where we got here  
02:40:46 7 today. In other words, they would know, at any point in time,  
02:40:49 8 where that original document is, correct?

02:40:51 9 A The system doesn't track where the document originated.  
02:40:56 10 The system tracks when we receive them after they were signed  
02:40:59 11 by the borrower. I mean, at that time, that is when a folder  
02:41:04 12 is created. They're stuck in that folder. A bar code is  
02:41:09 13 attached to the outside of that folder, which is what is used  
02:41:12 14 to scan to tell where the original documents are. So, that's  
02:41:16 15 when that is created. That's when the tracking starts when we  
02:41:19 16 receive them after the closing.

02:41:20 17 Q Is that called a collateral file?

02:41:22 18 A Yes, that's what we call it.

02:41:24 19 Q Okay. And where is the collateral file stored today? If  
02:41:29 20 a collateral file were not stored in the safe at, for example,  
02:41:34 21 Wells Fargo's attorney's office, where would that collateral  
02:41:37 22 file be stored?

02:41:38 23 A It's in Billings, Montana.

02:41:40 24 Q Okay. And Billings, Montana, has the records of how  
02:41:45 25 that -- whatever was in the collateral file -- we're assuming

02:41:48 1 the original note, the original deed of trust -- how that  
02:41:50 2 traveled from April 2002 until today?

02:41:54 3 In other words, you can actually go on -- in that  
02:41:57 4 log you're talking about and say here, on April 19th, 2002,  
02:42:01 5 say, Mr. Slovak had the original. He was signing it. It's  
02:42:05 6 given to the title company. It goes to, uh, the escrow  
02:42:09 7 company, or it goes to Wells Fargo to make a copy of it,  
02:42:13 8 and either a copy or the original is taken to the County  
02:42:16 9 Recorder's Office, correct? And then --

02:42:18 10 MR. WILLIS: Objection. Asked and answered.

02:42:21 11 THE COURT: Not only is it asked and answered,  
02:42:23 12 but I think it's quite lengthy and compound potentially  
02:42:28 13 because I was losing track.

02:42:29 14 So, can you answer your question -- ask that  
02:42:30 15 question in a different way, sir?

02:42:32 16 MR. JOHANNESSEN: Yeah. Let me break it down,  
02:42:34 17 Your Honor. Thank you. I apologize for that.

02:42:36 18 BY MR. JOHANNESSEN:

02:42:36 19 Q Mr. Slovak signs a deed of trust in a title company in  
02:42:42 20 April of 2002. That's kind of where everything kind of  
02:42:45 21 starts. Right? We're going to the close for their -- buying  
02:42:47 22 something or refinancing something or taking out a loan or  
02:42:50 23 whatever. Is that correct? That's pretty much where the  
02:42:53 24 original is at that point, correct?

02:42:54 25 A Um, I don't know where the closing took place on this

02:42:56 1 loan.

02:42:56 2 Q Let's assume it took place in Incline Village.

02:43:00 3 A I mean, I can't assume anything, so -- I mean, I don't  
02:43:03 4 know where it happened so.

02:43:04 5 Q How would you find out where it happened?

02:43:06 6 A I would have to review the system of record.

02:43:09 7 Q And that would be that log you're talking about?

02:43:12 8 A No.

02:43:12 9 Q What's the system of record?

02:43:13 10 A It would be -- I'm assuming it would be in the  
02:43:17 11 origination documents that are scanned into the system.

02:43:20 12 Other than that, I don't know. I couldn't tell you where  
02:43:22 13 it was.

02:43:23 14 MR. JOHANNESSEN: Your Honor, may I make an oral  
02:43:25 15 request to bifurcate this issue for a later determination?

02:43:28 16 I understand your charge and what you're looking at  
02:43:31 17 right now, Your Honor, on the Motion For Sanctions. I'm not  
02:43:35 18 suggesting that that be delayed. What I am suggesting is  
02:43:38 19 that we don't arrive at a default position via the Motion  
02:43:42 20 For Sanctions, that the original was actually produced on  
02:43:45 21 June 8th because we don't know that. We know the attorneys  
02:43:49 22 with told that. And again, I don't -- I'm not --

02:43:51 23 THE COURT: See, here's the problem --

02:43:52 24 MR. JOHANNESSEN: Yes.

02:43:55 25 THE COURT: -- that was not the position of your

02:43:55 1 co-counsel.

02:43:58 2 MR. JOHANNESSEN: Pardon?

02:43:58 3 THE COURT: That was not the position of your  
02:44:01 4 co-counsel. The position of you co-counsel in the Motion of  
02:44:03 5 Sanctions is that the representation that they made was  
02:44:05 6 materially false. Their representation is that this was the  
02:44:07 7 original. There was never an argument, nor was there ever  
02:44:13 8 anything put forward to say that somehow these documents that  
02:44:16 9 were at the title company were not the original documents that  
02:44:19 10 then made their way to the recorder's office, and then to the  
02:44:22 11 custodian of records for Wells Fargo.

02:44:25 12 What the position has been is that these attorneys,  
02:44:29 13 their law firm, and Wells Fargo, somewhere along the way, knew  
02:44:33 14 that these were false documents and then represented that they  
02:44:37 15 were originals. But this idea that somehow, now, the  
02:44:42 16 attorneys didn't know, is not exactly what the position has  
02:44:46 17 been.

02:44:46 18 So I, I understand what you're saying in terms of  
02:44:50 19 bifurcating the question of the original nature of the  
02:44:53 20 documents, which I will hear from the defense as to how we  
02:44:56 21 should proceed, but I have to tell you, if you can't already  
02:45:04 22 tell, I'm a little frustrated with where we're at because I  
02:45:09 23 feel like we've gone off on a turn that we did not intend to  
02:45:13 24 go on.

02:45:13 25 Mr. Pankopf, I think you had intended to say

02:45:16 1 something earlier, sir. Is there something that you need to  
02:45:19 2 add to this because you were the attorney involved from the  
02:45:21 3 beginning?

02:45:22 4 MR. PANKOPF: I just wanted to clarify the  
02:45:24 5 Court's recollection of what happened on May 10th. It wasn't  
02:45:26 6 a situation where the hearing had started and we were asking  
02:45:29 7 for the ability to have the note and the deed of trust  
02:45:32 8 examined and the -- Judge Cooke, Magistrate Judge Cooke  
02:45:36 9 said, no, that's not going to happen. I'm not going to allow  
02:45:39 10 that to happen.

02:45:40 11 THE COURT: Okay.

02:45:40 12 MR. PANKOPF: And then, you know, Ms. Dove  
02:45:43 13 brought to the Court's attention that we were trying to  
02:45:45 14 get a written settlement agreement finalized and that they  
02:45:50 15 wanted to make sure that once this settlement was finalized,  
02:45:54 16 Mr. Slovak, the plaintiff, didn't go off and file a new  
02:45:57 17 lawsuit, so she wanted a clause in there that we're waiving  
02:46:01 18 any claims as to the authenticity of the document. And then  
02:46:04 19 it was at that point that Judge Cooke said, well, if you want  
02:46:07 20 that in the settlement agreement, then they get to examine  
02:46:10 21 the document.

02:46:11 22 THE COURT: Okay.

02:46:11 23 MR. PANKOPF: Okay? So I just wanted to clarify  
02:46:13 24 that. I wasn't --

02:46:13 25 THE COURT: And I appreciate that, sir. That

02:46:15 1 is -- after you said that, that is my recollection of the  
02:46:19 2 transcript as well -- or at least along those lines.

02:46:22 3 MR. JOHANNESSEN: May I stream a --

02:46:24 4 THE COURT: Just hold on a second.

02:46:26 5 MR. JOHANNESSEN: All right. I'm sorry.

02:46:26 6 THE COURT: Let me just gather my thoughts for a  
02:46:28 7 moment.

02:46:28 8 MR. JOHANNESSEN: Sure.

02:46:34 9 THE COURT: Let me turn to Mr. Willis because  
02:46:36 10 you've made your position, but let me hear from Mr. Willis on  
02:46:39 11 this issue, at least shortly, because I think I'm going to  
02:46:43 12 need to take a break in a minute.

02:46:44 13 So, please.

02:46:46 14 MR. WILLIS: Well, I'm not sure I understand the  
02:46:48 15 issue. The issue is we bifurcate this issue somehow?

02:46:51 16 THE COURT: I think what the argument is, or  
02:46:53 17 at least the position is that the plaintiff, as I understand  
02:46:56 18 it -- and this is me paraphrasing -- is that the question  
02:46:59 19 of whether or not these are, in fact, the originals is not  
02:47:02 20 something that the Court makes a finding on as it relates  
02:47:05 21 to this motion; but, rather, simply makes a finding as it  
02:47:09 22 relates to the admissibility and the opinions provided by  
02:47:15 23 plaintiff's expert. In other words, the Court can rule on the  
02:47:18 24 Motion For Sanctions, but not go the next step to then say,  
02:47:22 25 and, yes, these are originals and, therefore, they should be

02:47:26 1 -- the settlement should be consummated. In other words,  
02:47:29 2 that second question of the original nature of the documents  
02:47:32 3 then becomes a separate question to which there may need to  
02:47:36 4 be additional evidence provided.

02:47:38 5 I think that's how I understand it. And if I'm  
02:47:41 6 wrong, better tell me now so that Mr. Willis can speak, you  
02:47:44 7 know, intelligently to what's being said here.

02:47:46 8 MR. JOHANNESSEN: May I respond to you with a  
02:47:47 9 hypothetical, Your Honor?

02:47:48 10 THE COURT: No. I need to know what is the  
02:47:50 11 position.

02:47:50 12 MR. JOHANNESSEN: Okay. Yes. That's correct.  
02:47:51 13 Because I, I believe, from what I have seen and what -- the  
02:47:56 14 short period of time, it appears, giving the benefit of doubt  
02:48:00 15 to counsel, that it is completely plausible that Wells Fargo  
02:48:04 16 said here are the originals and counsel, like a lot of us do,  
02:48:07 17 say, okay, we'll take those. So, when representing to the  
02:48:11 18 Court that they're originals, they're taking their client's  
02:48:14 19 word for it. And so we have a bifurcation where we're  
02:48:17 20 actually examining those documents as to whether they actually  
02:48:21 21 are authentic.

02:48:22 22 THE COURT: Mr. Willis.

02:48:23 23 MR. WILLIS: Well, this raises -- if we give  
02:48:28 24 the benefit of the doubt, why are we the object of a motion  
02:48:31 25 for sanctions? That's my first reaction.



02:48:33 1 But getting over that hump, you know, they brought  
02:48:36 2 this issue up to the Court for an evidentiary hearing in the  
02:48:39 3 context of the Motion For Sanctions --

02:48:41 4 THE COURT: Actually, in fairness to them, I'm  
02:48:43 5 the one that asked for the evidentiary hearing, sir. They  
02:48:47 6 did not ask for an evidentiary hearing. I did. To make sure  
02:48:50 7 we had a clean record.

02:48:51 8 MR. WILLIS: Okay.

02:48:52 9 THE COURT: And so for that clarification --

02:48:53 10 MR. WILLIS: My point is this is the way they  
02:48:56 11 tee'd -- the issue came into this court --

02:48:59 12 THE COURT: Right.

02:48:59 13 MR. WILLIS: -- was we think -- or that we have  
02:49:00 14 proof that these are false. We have proof that you knew they  
02:49:03 15 were false. You're perpetrating a fraud on the court.

02:49:07 16 What's your proof?

02:49:08 17 Well, it's this guy, Dr. Kelley.

02:49:10 18 Okay. Any other proof?

02:49:12 19 No.

02:49:13 20 Dr. Kelley testifies. He either is or he isn't  
02:49:15 21 qualified as an expert. If he's not qualified as an  
02:49:18 22 expert, then they don't have any proof that our evidence,  
02:49:21 23 representations by the bank, by members of our law firm that  
02:49:25 24 these are the original documents is in any way false. So I  
02:49:30 25 think, Your Honor, that if you decide that his testimony

02:49:34 1 isn't competent, or he's not qualified to give the testimony,  
02:49:37 2 resolving the Motion For Sanctions, uh, what I would like to  
02:49:42 3 look at is does this create a law of the case issue within the  
02:49:45 4 confines of this litigation?

02:49:47 5 Now, maybe it does. Maybe it doesn't. But what  
02:49:50 6 I'm worried about is is that every time we attempt to enforce  
02:49:54 7 the settlement or, God forbid, go forward with litigation,  
02:49:59 8 we'll get this, but you can't prove they're the original  
02:50:02 9 documents. We get that all the time. And it's just -- it's  
02:50:06 10 just -- well, it's the reason that Mr. Slovak has been living  
02:50:09 11 in his house for the last six years for free in this case,  
02:50:12 12 so.

02:50:13 13 I'm venting a little, Your Honor. I'm sorry. I  
02:50:16 14 hope I've answered your question. But, I guess the bottom  
02:50:20 15 line is I would really like to look at the law of the case  
02:50:23 16 implications before I say whether or not this issue ought to  
02:50:27 17 be bifurcated or preserved.

02:50:30 18 THE COURT: Well, let me ask you this. Are you  
02:50:31 19 withdrawing the Motion For Sanctions or are you proceeding  
02:50:34 20 on a Motion For Sanctions against these attorneys now that  
02:50:38 21 you're making this argument?

02:50:39 22 MR. JOHANNESSEN: Well, of course we're going to  
02:50:40 23 proceed with it, Your Honor.

02:50:41 24 THE COURT: Okay.

02:50:41 25 MR. JOHANNESSEN: The reason why I'm saying that

02:50:43 1 is because it was my understanding that this was limited to  
02:50:44 2 the admissibility of this expert witness' opinion. That's  
02:50:47 3 what you informed us on. You were very clear with us and I  
02:50:50 4 appreciate the clarification, which is why the motion was  
02:50:53 5 filed.

02:50:53 6 THE COURT: Then I think that Mr. Willis' point  
02:50:55 7 is similar to where my understanding was; is that that then  
02:50:59 8 leaves us with no other evidence that these are not originals,  
02:51:02 9 except the word of officers of this court to say that these  
02:51:06 10 are the originals that we were provided by Wells Fargo, and  
02:51:09 11 that should be sufficient to consummate this settlement  
02:51:12 12 agreement. And that's it.

02:51:16 13 It's sort of a chicken and the egg issues, I guess,  
02:51:20 14 in some respects. Because if the documents are -- if there's  
02:51:24 15 no evidence that the documents are not originals, if this  
02:51:29 16 witness' testimony is not provided -- is not admissible, and  
02:51:33 17 it's not accepted by the Court, then there's no evidence to  
02:51:36 18 claim that they're not originals.

02:51:37 19 And now the argument is, well, even if that is  
02:51:40 20 the case, there may still be some evidence that they aren't  
02:51:44 21 originals. And that is not what my understanding was.

02:51:48 22 Now, on the same token, I'll give you the benefit  
02:51:51 23 of the doubt that I don't know that it was made entirely  
02:51:56 24 clear, and especially in the previous proceedings, and then  
02:51:59 25 leading into my taking over this case, that that necessarily

02:52:03 1 means a finding would be made as to the original nature of the  
02:52:06 2 documents. However, if we're left with no other evidence  
02:52:09 3 except the word of attorneys that are officers of the court,  
02:52:13 4 that is the only information that we have.

02:52:15 5 MR. JOHANNESSEN: I understand.

02:52:16 6 THE COURT: And so in my mind, if there -- the  
02:52:19 7 whole thing starts with, okay, let's finalize this deal.  
02:52:24 8 I have the documents you said you wanted. And then it  
02:52:28 9 becomes, well, wait, no, we don't think these are the  
02:52:30 10 documents that we said we wanted. But if at the end of  
02:52:34 11 the day the Court rejects that position, then we're back to  
02:52:38 12 where we were -- I think it was in April 2018 when you  
02:52:41 13 first tried to consummate the settlement.

02:52:44 14 Is that correct, Ms. Dove?

02:52:45 15 MS. DOVE: Yes. That's correct.

02:52:46 16 THE COURT: And is that correct, Mr. Pankopf?  
02:52:48 17 Was it April of 2018 when everything was -- --

02:52:50 18 MR. PANKOPF: I think that -- I'm sorry to  
02:52:51 19 interrupt.

02:52:52 20 I thought that the April hearing was continued to  
02:52:55 21 May 10th, wasn't it?

02:52:56 22 MS. DOVE: Yeah, it might have, it might have  
02:52:57 23 occurred in May, but it started early this year.

02:53:00 24 THE COURT: But nonetheless, the position at  
02:53:02 25 that point was we have the original documents. We're ready to

02:53:04 1 go.

02:53:04 2 And so there is no evidence to the contrary. And  
02:53:06 3 I will tell you I am disinclined to have more evidence and  
02:53:11 4 more testimony and more hearings on this question because  
02:53:14 5 without expert testimony, I see no reason why I should  
02:53:21 6 question the statements made by officers of this court.  
02:53:27 7 And, I see no reason not to accept the fact that they have  
02:53:31 8 affidavits provided by custodians of record that state we  
02:53:34 9 received these documents and then we provided them to our  
02:53:38 10 attorneys.

02:53:38 11 Now, I know the Rules of Evidence pretty good.

02:53:42 12 MR. JOHANNESSEN: I have no doubt.

02:53:44 13 THE COURT: So, I don't see how we get past that  
02:53:48 14 issue. But, for right now, I'm not sure we even need to even  
02:53:53 15 get there.

02:53:53 16 Let's take a break. Let us all take a moment. But,  
02:53:59 17 let me ask you this before we do that. Is there any reason --  
02:54:02 18 do you have cross-examination, Mr. Willis, of this witness?

02:54:04 19 MR. WILLIS: No, Your Honor.

02:54:05 20 THE COURT: Do you have further questions for  
02:54:07 21 this witness, sir?

02:54:08 22 MR. JOHANNESSEN: It depends on whether we're  
02:54:10 23 going to bifurcate or not, Your Honor. I don't want to  
02:54:12 24 leave anything because I've -- and I don't want to stall your  
02:54:15 25 break. I know -- I mean, I need a break. I'm not trying to

02:54:20 1 do that. I just -- what I do want to do is make sure that  
02:54:22 2 we're not foreclosing the possibility that when the expert  
02:54:26 3 arrived on June 8th, 2018, his determination as to the  
02:54:30 4 signatures and the initials were they were copies, but  
02:54:35 5 that doesn't -- that that does not necessarily mean there is  
02:54:37 6 or is not an original.

02:54:38 7 THE COURT: Okay. Let me leave you with this --

02:54:40 8 MR. JOHANNESSEN: And I --

02:54:41 9 THE COURT: Let me leave you with this thought.

02:54:43 10 MR. JOHANNESSEN: Yes.

02:54:43 11 THE COURT: At that point, what would be the  
02:54:45 12 good faith basis of your client to continue to refuse to  
02:54:50 13 consummate this settlement?

02:54:54 14 Because if there is no evidence to the contrary that  
02:54:56 15 these are originals -- and these attorneys are saying they  
02:54:59 16 are, and Wells Fargo says under their custodian of records  
02:55:03 17 these are -- what would be the good faith basis, at that  
02:55:06 18 point, for your client to take the position that, no, these  
02:55:10 19 are, in fact, forgeries now?

02:55:12 20 MR. JOHANNESSEN: I would -- I like to use the  
02:55:14 21 word "copies," but, um -- which are different, because you  
02:55:16 22 determine whether they're a forgery or not. It's -- they're  
02:55:19 23 either copies or originals --

02:55:20 24 THE COURT: You're not going to -- we're going  
02:55:20 25 to stop with that cutting of words.

02:55:23 1 MR. JOHANNESSEN: Okay. I will. I will.

02:55:25 2 There is nothing that the, uh -- the client had a  
02:55:28 3 good faith belief that these documents are not original. It  
02:55:33 4 doesn't mean the original does not exist. It just means that  
02:55:37 5 it was not produced on June 8th. If we take the time to --

02:55:40 6 THE COURT: What would be the good faith basis  
02:55:43 7 for your client to continue to claim that these documents that  
02:55:44 8 have been provided are not the originals at that point, if we  
02:55:49 9 determine, the Court determines, that his expert is not going  
02:55:52 10 to provide the testimony, or that his evidence is not going  
02:55:56 11 to be admissible and is not going to be accepted by the Court,  
02:55:59 12 what would be the good faith basis, at that point, for your  
02:56:02 13 client to continue with the position that these are not  
02:56:04 14 originals?

02:56:04 15 And I'm going to take a break and let you and  
02:56:07 16 Mr. Pankopf discuss that. You don't have to answer that  
02:56:09 17 right away. But, I want you both to really consider that.

02:56:13 18 MR. JOHANNESSEN: Absolutely. Sure.

02:56:14 19 THE COURT: Because that's a road that I don't  
02:56:16 20 know that you want to go down.

02:56:18 21 MR. JOHANNESSEN: I'm not going down either  
02:56:20 22 road, Your Honor.

02:56:20 23 THE COURT: Okay.

02:56:21 24 So at this point, we're going to be in recess and  
02:56:23 25 we'll be back at ten after 3:00.

02:56:25 1 MR. JOHANNESSEN: Thank you.

02:56:26 2 (Recess taken.)

03:13:22 3 THE CLERK: In the matter of Robert A. Slovak  
03:13:24 4 versus Golf Course Villas Homeowners Association, court is  
03:13:27 5 again in session.

03:13:28 6 THE COURT: Thank you. Please be seated.

03:13:29 7 Before we get started, I wanted to ask if there's  
03:13:32 8 been an opportunity by plaintiff's counsel to review the  
03:13:35 9 documents that Mr. Willis had provided with respect to the  
03:13:39 10 court documents involving Dr. Kelley.

03:13:42 11 MR. PANKOPF: Yes. Your Honor, I would just  
03:13:45 12 like to point out that the first Exhibit A is an unsigned  
03:13:49 13 order.

03:13:51 14 THE COURT: Okay.

03:13:51 15 MR. PANKOPF: And, uh, so, you know, I object to  
03:13:53 16 that being brought into evidence. It's not an order.

03:13:57 17 THE COURT: Is it a federal case?

03:14:01 18 MR. PANKOPF: I think this is Colorado, a  
03:14:04 19 Colorado State district court case, in the County of  
03:14:07 20 Jefferson. So, it's a state court action.

03:14:26 21 The Exhibit C is simply a motion in limine to  
03:14:31 22 preclude evidence that was filed. I don't, uh, see what  
03:14:35 23 the relevance of that is. It's just more paper or more  
03:14:43 24 electronic blips. So, I would object to A and C.

03:14:48 25 And then the other two orders that were filed in



03:14:52 1 the case is five years ago.

03:14:55 2 THE COURT: Okay.

03:14:56 3 MR. PANKOPF: That would be fine.

03:14:57 4 THE COURT: I appreciate that, sir.

03:14:58 5 Um, what we'll go ahead and do is I'll go ahead and  
03:15:00 6 -- we'll go ahead and have those filed. And then I'll review  
03:15:03 7 what they are and make a determination on those.

03:15:06 8 Let me start with this -- and Mr. Johannessen, you  
03:15:10 9 may want to just take a seat, sir, for the moment.

03:15:21 10 COURT REPORTER: Your Honor, can I just clarify?  
03:15:21 11 Are you marking that as an exhibit for the record so that --

03:15:22 12 THE COURT: You know, that probably makes the  
03:15:22 13 most sense to mark it as a defense exhibit. I think we're on  
03:15:27 14 number 8 --

03:15:28 15 MR. WILLIS: Defense 8. Defense 7?

03:15:36 16 THE CLERK: Eight.

03:15:44 17 THE COURT: So we'll mark that as an exhibit and  
03:15:47 18 I will hold off on ruling on the admissibility of that  
03:15:50 19 exhibit.

03:15:51 20 (Whereupon Exhibit 8 -- a document, was marked for  
03:15:53 21 identification only.)

03:15:53 22 THE COURT: Let me start with this. This has  
03:15:55 23 been, in my opinion, a fairly contentious piece of litigation  
03:15:59 24 that's gone on for an extensive period of time. It was filed  
03:16:02 25 in 2013 and here we are in 2018, almost 2019. One of the

03:16:07 1 things that I noticed as I reviewed everything on the record,  
03:16:10 2 was that it appears no matter what the decision is by a given  
03:16:14 3 judge in this case, there's either an appeal, or there's an  
03:16:17 4 argument against why that was wrong, et cetera. And what I  
03:16:20 5 would -- the purpose of this hearing, from my perspective,  
03:16:25 6 was to create a very thorough record in the event that that  
03:16:28 7 happened at the conclusion of this hearing as well.

03:16:30 8 But with that in mind, it seems to me that in order  
03:16:33 9 to ensure that we really do have the most thorough record,  
03:16:36 10 that we do get to that second question. And we actually do  
03:16:39 11 have some evidence as to the authenticity and the originality  
03:16:42 12 of these documents, if for no other reason to create a record  
03:16:46 13 and to protect everybody involved. I think it will resolve,  
03:16:51 14 hopefully, all of the issues as it relates to whether or not  
03:16:54 15 these documents are original, at least in terms of the Court  
03:16:56 16 making that additional finding. But, quite frankly, I think  
03:17:01 17 it behooves everybody in this room to have a record made for  
03:17:05 18 that purpose, in the event that this case does go up on appeal  
03:17:09 19 again, or if there is any additional litigation over whether  
03:17:12 20 or not the settlement should be consummated, effectively, at  
03:17:15 21 that point.

03:17:16 22 To be honest with you, I'm hesitant to do that  
03:17:19 23 because I know how much money in attorney's fees and  
03:17:22 24 everything has gone into this but, at the same token, I would  
03:17:25 25 rather do that now and have it done, rather than to do this

03:17:28 1 piecemeal over the next several months.

03:17:30 2           So this is what my thought is and this is the  
03:17:32 3 proposal that I would make: At this point, what we've heard  
03:17:35 4 today is the testimony from Dr. Kelley. I've reviewed all  
03:17:38 5 the evidence and things that have been provided both with the  
03:17:42 6 motions, the response, the opposition. We have the exhibits,  
03:17:44 7 much of which, from what I can tell, are either exhibits that  
03:17:47 8 were already attached to motions. For the most part, they  
03:17:50 9 seem to be duplicative of what the Court has already received  
03:17:53 10 in some form or another. I haven't looked through all the  
03:17:56 11 plaintiff's exhibits, but that's from what I can gather the  
03:17:59 12 case.

03:17:59 13           I believe that the defense exhibits, for the most  
03:18:01 14 part, appear to be either copies or what they purport to be  
03:18:05 15 the original documents in this case. I don't see any real  
03:18:09 16 reason not to consider what's been provided. And we can  
03:18:13 17 discuss the admissibility of all those things at a later time,  
03:18:16 18 but that's, basically, what's before the Court. But, this is  
03:18:19 19 what my thought is: I think we should have a second hearing.  
03:18:23 20 And at that hearing, I would ask if Wells Fargo intends to  
03:18:27 21 have an expert witness that's going to opine as to whether or  
03:18:30 22 not these documents are original; that that person be prepared  
03:18:33 23 to testify to that but also, if necessary, provide a report to  
03:18:37 24 the plaintiff so that they can be prepared to cross-examine.

03:18:42 25           I think that in light of the fact that I think

03:18:45 1 today I was going to originally allow that person to testify  
03:18:48 2 strictly in a rebuttal capacity, but I think in this  
03:18:51 3 particular instance, because I think it makes sense to get  
03:18:55 4 to that second issue, that we should have that person prepared  
03:18:58 5 to testify to just not Dr. Kelley and his report, but also if  
03:19:01 6 that person is going to go on to do the next step, which I  
03:19:04 7 would suggest that they do so that we can get to that question  
03:19:07 8 of originality as well. If there's any witnesses as to chain  
03:19:12 9 of custody, I think those witnesses should be prepared to  
03:19:15 10 testify. And I would include in that anybody that could  
03:19:18 11 testify as to whether or not the documents that have been  
03:19:21 12 submitted as 3, 4 and 5 are the documents that were, in fact,  
03:19:24 13 provided to Dr. Kelley at the time that he reviewed them back  
03:19:28 14 in June of 2018.

03:19:29 15 At the conclusion of that hearing I will rule on  
03:19:37 16 the Motion For Sanctions and I will rule and make a finding  
03:19:41 17 as to whether or not these documents are original. And at  
03:19:45 18 that point, I will expect that the parties finish up the  
03:19:50 19 settlement, unless I hear from the parties as to what the  
03:19:53 20 next step should be.

03:19:55 21 My suggestion would be that you find a title  
03:19:58 22 company, or some other type of escrow company that could  
03:20:01 23 hold the money, and that could hold the original documents,  
03:20:04 24 so that you can do that at the end of that hearing as quickly  
03:20:08 25 as possible, without anybody having to argue over, well, I'm

03:20:11 1 not giving you the money until I get the documents and vice  
03:20:15 2 versa. But, that's just me. So, I just want to throw that  
03:20:17 3 out there at least for the parties to consider at this point.

03:20:20 4 I guess then my question, we'll start with this,  
03:20:25 5 Mr. Willis, how long do you think it will take you, and how  
03:20:29 6 many witnesses do you anticipate?

03:20:31 7 And I know that you're going to have to be sort of  
03:20:33 8 making a decision on the fly, and I won't hold you to this,  
03:20:36 9 but can you give me some idea of how long you think you would  
03:20:39 10 need for purposes of that additional part of a hearing.

03:20:41 11 MR. WILLIS: May I take a moment and consult  
03:20:44 12 with Ms. Kelly?

03:20:46 13 THE COURT: Absolutely, sir. Please do that.

03:21:26 14 (Defense counsel confer.)

03:21:26 15 MR. WILLIS: Your Honor, we can have a report  
03:21:28 16 ready before Christmas.

03:21:30 17 THE COURT: Okay.

03:21:31 18 MR. WILLIS: And then given my trial schedule,  
03:21:34 19 I have a discovery schedule on a couple other cases, I would  
03:21:37 20 suggest that the hearing occur in January.

03:21:39 21 THE COURT: Okay. One thing that I would say is  
03:21:42 22 that since we have your witness here, if you would like to  
03:21:45 23 have her proceed, at least on the rebuttal aspects, we can at  
03:21:49 24 least get some of her testimony in. And I don't know if you'd  
03:21:52 25 want to proceed with that or if you'd rather just have her

03:21:54 1 come back and testify to the rebuttal aspects of her opinions,  
03:21:58 2 as well as her opinion as to the authenticity and the  
03:22:01 3 originality of the documents -- and I don't even think that's  
03:22:04 4 a word, but I'm using it because I don't know how to refer to  
03:22:08 5 the documents. So, I apologize if that sounds bizarre.

03:22:10 6 MR. WILLIS: You're not intending to rule on the  
03:22:12 7 fundamental or the found -- the preliminary question of his  
03:22:16 8 qualifications until the second hearing?

03:22:18 9 THE COURT: Correct.

03:22:19 10 MR. WILLIS: And then I would ask that we just  
03:22:21 11 put it all together in the second hearing.

03:22:23 12 THE COURT: And what I should say is that I see  
03:22:25 13 these as two things that are sort of intertwined. So to the  
03:22:28 14 extent that if we accept Dr. Kelley's position, or if his  
03:22:33 15 evidence is admitted, then we have the Motion For Sanctions  
03:22:36 16 to deal with, but that, in effect, would deal with, to some  
03:22:38 17 extent, I think that question and vice versa. So I would wait  
03:22:42 18 to, I think, rule on everything all at the same time, but I  
03:22:46 19 want to make sure that your expert is given the opportunity  
03:22:49 20 because I believe you had indicated that she was going to be a  
03:22:51 21 rebuttal witness. So, I don't want to make any finding with  
03:22:56 22 respect to Dr. Kelley until I've heard from your witness on  
03:22:58 23 those positions. So, if that helps clarify that.

03:23:00 24 MR. WILLIS: Well, if we presented our witness  
03:23:02 25 today on, solely on the issue of qualifications, would the

03:23:05 1 Court be inclined to make a ruling on that issue before the  
03:23:08 2 next hearing?

03:23:11 3 THE COURT: To be quite frank with you, I  
03:23:13 4 had anticipated I would be able to do that today, but I  
03:23:16 5 would like to review the transcript and be able to use the  
03:23:20 6 transcript to be able to do that; so, I'm not sure that I  
03:23:22 7 could rule by the end of today without having a chance to go  
03:23:26 8 back and review everything on the transcript.

03:23:29 9 And I don't know if that changes what you want to  
03:23:32 10 do or how you want to proceed. But I -- you know, in light  
03:23:34 11 of what I'm doing here today, I'm going to defer, to some  
03:23:37 12 extent, to the attorneys because I think I'm putting you all  
03:23:40 13 in sort of a position that nobody anticipated today.

03:23:43 14 If you want a moment to think about that, let me  
03:23:45 15 know.

03:23:45 16 MR. WILLIS: Okay. One moment.

03:23:46 17 THE COURT: Okay.

03:24:10 18 (Defense counsel confer.)

03:24:10 19 MR. WILLIS: Your Honor, if it's within our  
03:24:12 20 discretion, we would prefer to put Ms. Kelly off until the  
03:24:16 21 next hearing.

03:24:17 22 THE COURT: That's fine.

03:24:18 23 MR. WILLIS: Take care of the whole thing.

03:24:19 24 We do have some concern on the chain of custody,  
03:24:22 25 for lack of a better term. Um, we received the note in 2014.

03:24:32 1 We then transmitted it, for a short period of time, to  
03:24:35 2 McCarthy Whole House for the mandatory mediation. But then  
03:24:39 3 it was returned to us by McCarthy, then we retained it until  
03:24:44 4 2018, at which time we also received the deed of trust. And  
03:24:51 5 then in addition to having Mr. -- or Dr. Kelley review that on  
03:24:55 6 June 8th, we also delivered those documents to Ms. Kelly for  
03:25:01 7 review a week or two ago. And so she -- which, you know,  
03:25:05 8 we'll establish that part of the chain through her testimony  
03:25:09 9 as an expert. And then that came back to us. And they are  
03:25:12 10 now resting with the Court.

03:25:15 11 Our concern is do we need to bring, in your  
03:25:19 12 estimation, the paralegal who pulled it out of the safe,  
03:25:23 13 the associate that sat through the document review by  
03:25:28 14 Dr. Kelley, the McCarthy Whole House lawyers?

03:25:31 15 I would not think so since we filed declarations.  
03:25:35 16 They haven't been contested, to the best of my knowledge, as  
03:25:38 17 to where it went.

03:25:41 18 MR. PANKOPF: We filed an objection.

03:25:42 19 THE COURT: They did file objections to those  
03:25:44 20 declarations, which I overruled, because I do believe that  
03:25:47 21 they were based on personal knowledge. And to the extent  
03:25:49 22 that we have authenticity issues, those were perfectly within  
03:25:52 23 the scope of what a business record's custodian would state.

03:25:58 24 Um, I guess the question will be -- and again, I'm  
03:26:03 25 going to ask this question again. Are you continuing to



03:26:06 1 proceed with the Motion For Sanctions? Or, are you going  
03:26:10 2 with the position that these are not authentic because they  
03:26:15 3 were not the same documents that were filed initially? In  
03:26:22 4 other words, that somewhere before they were actually sent to  
03:26:25 5 Wells Fargo, something happened. They were copied or they  
03:26:29 6 were forged or whatever.

03:26:31 7 Because I think I'm a little confused myself, and I  
03:26:34 8 think it goes back to what Mr. Willis is really questioning  
03:26:37 9 because if there isn't really a question as to these documents  
03:26:40 10 being the same ones that Wells Fargo provided, and that Mr. --  
03:26:44 11 or Dr. Kelley reviewed, and that their expert reviewed, but  
03:26:47 12 really the question is whether or not the documents, before  
03:26:50 13 they were sent to Wells Fargo were authentic, then I think it  
03:26:54 14 does create a different question.

03:26:55 15 So let me ask you that, Mr. Johannessen, and we'll  
03:26:58 16 go from there.

03:26:59 17 MR. JOHANNESSEN: May I approach?

03:27:00 18 THE COURT: Please.

03:27:00 19 MR. JOHANNESSEN: I'm more comfortable at the  
03:27:02 20 podium.

03:27:02 21 THE COURT: No. I appreciate that, sir.  
03:27:04 22 Thank you.

03:27:04 23 MR. JOHANNESSEN: You can probably hear me  
03:27:05 24 better.

03:27:06 25 The answer to the first question is yes, to proceed

03:27:10 1 with the motion. But, I also want to make myself clear, which  
03:27:15 2 I don't always do --

03:27:16 3 THE COURT: Okay.

03:27:17 4 MR. JOHANNESSEN: -- but I try. That I think  
03:27:20 5 it's very important -- I focus on process --

03:27:25 6 THE COURT: Uh-huh.

03:27:26 7 MR. JOHANNESSEN: -- and how things work. And  
03:27:28 8 hopefully, the process will end up in a just and fair result.  
03:27:33 9 And where I stand now, as an attorney, you asked me about good  
03:27:36 10 faith and I understand the gravity of the allegation, and I  
03:27:40 11 also understand the gravity of the question. We arrived here  
03:27:45 12 at a hearing and it was my understanding, based on the record,  
03:27:50 13 that it was as to the admissibility of plaintiff's expert's  
03:28:00 14 opinion, and it did not go to the authenticity of anything  
03:28:03 15 other than the fact that the expert is saying it's a copy.

03:28:07 16 And I must tell you, Your Honor -- and this is in  
03:28:10 17 good faith, as an officer of the court, and I truly believe  
03:28:13 18 this because I know enough people that are in science and the  
03:28:16 19 advancements of technology over the last, 20, 25 years, things  
03:28:20 20 are changing. And it's because of that that we have people  
03:28:22 21 getting out of jail because we have DNA analysis. The same  
03:28:25 22 thing here. Things change. And so the reason why -- and it's  
03:28:30 23 another issue on good faith. I understand why the Court  
03:28:40 24 denied plaintiff's request to take the deposition of a  
03:28:42 25 custodian, or whatever that might be, or who she is, or he.

03:28:47 1 I understand that. But I don't -- and this is with all due  
03:28:52 2 respect, Your Honor -- I do not understand why we were not  
03:28:54 3 able to take the deposition of an expert that was --

03:28:57 4 THE COURT: Okay.

03:28:57 5 MR. JOHANNESSEN: Oh. Okay.

03:28:59 6 THE COURT: Maybe I wasn't clear.

03:29:00 7 MR. JOHANNESSEN: Okay.

03:29:00 8 THE COURT: But, let me be clear again.

03:29:02 9 MR. JOHANNESSEN: Yes.

03:29:03 10 THE COURT: When I make a ruling, we're not  
03:29:05 11 going to re-argue it. Okay? We're not going to have  
03:29:07 12 re-argument over it. We're not going to revisit it. That  
03:29:10 13 decision has already been made. We're not going to go down  
03:29:13 14 that road again.

03:29:14 15 MR. JOHANNESSEN: Okay.

03:29:14 16 THE COURT: The question I have for you is  
03:29:16 17 whether or not you're proceeding with a Motion For Sanctions.  
03:29:18 18 Your answer is yes.

03:29:20 19 So Mr. Willis, yes, if I were you, I would have  
03:29:23 20 someone here that can testify to the chain of custody of these  
03:29:26 21 documents from the beginning to the end. Mr. Johannessen  
03:29:30 22 is telling me that he has a good faith basis to challenge the  
03:29:33 23 authenticity and whether or not these documents are original.  
03:29:36 24 I will accept that position. We don't need to go into any  
03:29:39 25 other argument over that.

03:29:40 1 This was never intended to be something where we  
03:29:43 2 were going to have depositions of anybody. The defense had  
03:29:45 3 never asked to have a deposition of your expert. So, having a  
03:29:49 4 deposition of a chain of custody witness made no sense to me.  
03:29:53 5 But, we're not going to go down that road again.

03:29:56 6 So based on what I'm hearing, we will reschedule  
03:29:58 7 this hearing for -- how long do we need in January? That's  
03:30:03 8 the question that we have now -- unless there's something else  
03:30:07 9 for you to argue, sir, that we haven't already revisited in  
03:30:10 10 terms of what you need to put on the record.

03:30:12 11 Mr. Johannessen, is there anything else you need to  
03:30:14 12 put on the record that we haven't already argued that you  
03:30:17 13 would like to place on the record today?

03:30:18 14 MR. JOHANNESSEN: Yes, Your Honor.

03:30:20 15 If -- I agree with the -- I don't if we call it a  
03:30:25 16 bifurcation or it's actually a continuance -- I believe it  
03:30:29 17 is plaintiff's prerogative, in a case like this, to be able  
03:30:36 18 to, if not -- to be able to depose the other side's expert,  
03:30:40 19 whether or not they deposed plaintiff's expert. I think  
03:30:43 20 that's a fair request. There's a lot at stake here. There's  
03:30:47 21 a lot of time that's been put on it, and it precedes both you  
03:30:50 22 and I even coming onto the stage on this thing. But, I  
03:30:53 23 believe that if we're going to continue it until January --  
03:30:55 24 which is fine, as long as it works with the Court and  
03:30:58 25 with Mr. Willis and his witnesses -- to able to take that

03:31:02 1 deposition. If they want to take plaintiff's expert's  
03:31:06 2 deposition, fine.

03:31:07 3 THE COURT: Okay. That's denied.

03:31:09 4 So what else would you like to put on the record?

03:31:11 5 MR. JOHANNESSEN: Um. I appreciate your  
03:31:14 6 patience.

03:31:15 7 THE COURT: I'm trying. I'm really trying.

03:31:17 8 MR. JOHANNESSEN: So am I, Your Honor. I know.  
03:31:19 9 I know. But, I'm just --

03:31:20 10 THE COURT: I think that, unfortunately, coming  
03:31:22 11 into this after the fact, makes it a little bit difficult  
03:31:26 12 for all of us. And I appreciate your professionalism and  
03:31:29 13 everything you're saying here today, sir. And I'm not trying  
03:31:31 14 to be flippant or anything like that. I appreciate that.

03:31:34 15 MR. JOHANNESSEN: You're in a tougher position  
03:31:36 16 than I am. I understand.

03:31:37 17 THE COURT: What I will say is this, because  
03:31:38 18 I wasn't clear before the first hearing, I would like the  
03:31:42 19 parties to exchange, at least two weeks before the hearing,  
03:31:45 20 a witness list and exhibits so that everybody can be prepared.  
03:31:52 21 Because I do appreciate Mr. Johannessen's position of a  
03:31:55 22 deposition is usually intended to be able to explore those  
03:31:58 23 issues in preparation for having somebody testify at a  
03:32:01 24 hearing, and so since I'm denying that, because I don't  
03:32:05 25 believe in this case it's necessary, and for other reasons, I

03:32:09 1 think that it's only fair that we do that and, that way, we  
03:32:12 2 don't all come in here trying to figure out whose exhibit are  
03:32:16 3 what with these things flipping around.

03:32:19 4 So, two weeks ahead of the hearing I would ask that  
03:32:22 5 if there are any additional exhibits from the plaintiff's  
03:32:23 6 position, that those be provided. And any witnesses that you  
03:32:26 7 want to place on the record that you intend to call at that  
03:32:29 8 point, that you provide those names, and a list of those  
03:32:31 9 witnesses to the defense. And I would ask the defense to do  
03:32:33 10 the same.

03:32:36 11 I think in light of everything that's happened, and  
03:32:38 12 to make as good a record as we can, to make sure you can get  
03:32:42 13 through all the witness testimony you need, in light of no  
03:32:44 14 depositions, that we set this for two days. I hope that we  
03:32:48 15 don't need two days, but I don't want to have a situation  
03:32:51 16 like today, where we run into the end of the day and we know  
03:32:54 17 we're not going to get it done.

03:32:56 18 I understand what your understanding of the hearing  
03:33:01 19 was, and maybe I wasn't clear enough, but that's why I want to  
03:33:04 20 have this hearing and have that second half of the hearing, I  
03:33:09 21 guess for lack of a better term, all done at one time, and  
03:33:12 22 then a ruling done all at one time.

03:33:16 23 I guess at this point, is there anything else from  
03:33:18 24 the plaintiff's counsel that you need to put on the record  
03:33:21 25 before I -- are there any other witnesses -- or any other

03:33:22 1 questions of this witness at this time, I guess before we, we  
03:33:27 2 go to the next step? She's been sitting here the whole time.

03:33:30 3 MR. JOHANNESSEN: I believe the witness has been  
03:33:31 4 patient enough.

03:33:32 5 THE COURT: Okay. Thank very much.

03:33:34 6 You can step down. I apologize. I should have  
03:33:36 7 asked that question first before I --

03:33:36 8 MR. JOHANNESSEN: But there is one more thing  
03:33:38 9 that I --

03:33:39 10 THE COURT: Okay.

03:33:39 11 MR. JOHANNESSEN: This isn't a Steve Jobs one  
03:33:42 12 more thing, so --

03:33:42 13 THE COURT: All right.

03:33:43 14 MR. JOHANNESSEN: I would only ask, Your Honor,  
03:33:45 15 that, again, there's a -- Wells Fargo produces witness lists  
03:33:50 16 with 62 people, one of them who happened to be here today.  
03:33:54 17 If we're going to produce witness lists, it's very difficult,  
03:33:58 18 as an attorney, when you get a list with 62 names, to prepare.  
03:34:03 19 And, at the top of it they say one of them will be called.  
03:34:06 20 So, it's difficult. So if we could -- with the Court's  
03:34:09 21 permission, I would like to have Wells Fargo at least produce  
03:34:12 22 a short list.

03:34:13 23 THE COURT: Well, I think that either list  
03:34:15 24 that's provided should be the witnesses that are going to be  
03:34:18 25 called, not every witness that you could call, I guess. And

03:34:22 1 that goes for both sides.

03:34:23 2 MR. JOHANNESSEN: I appreciate that, Your Honor.

03:34:25 3 THE COURT: Um, so -- and we're not listening to  
03:34:27 4 62 witnesses, just so everybody is clear on that right now. I  
03:34:31 5 don't think there's any way we would get through that in two  
03:34:34 6 days anyway.

03:34:35 7 MR. WILLIS: Your Honor, we might have two.

03:34:37 8 THE COURT: Okay. I appreciate that.

03:34:39 9 MR. WILLIS: Other than the chain of custody.

03:34:41 10 Is Your Honor interested in discussing logistics and  
03:34:44 11 scheduling?

03:34:45 12 THE COURT: Yes. And that is what I was going  
03:34:47 13 to get to, but I wanted to make sure we didn't have any other  
03:34:51 14 witness -- or any questions of that witness.

03:34:52 15 And if I'm not clear, again, it's exhibits that  
03:34:54 16 you're intending to use and witnesses you're intending to  
03:34:57 17 call. Not everybody and everything that could potentially be  
03:34:59 18 a part of this case, I guess, for lack of better term.

03:35:02 19 Anything else?

03:35:03 20 MR. JOHANNESSEN: Did I say one last thing the  
03:35:06 21 last time?

03:35:06 22 THE COURT: You did. You did. But, I'll give  
03:35:08 23 you --

03:35:09 24 MR. JOHANNESSEN: One last thing -- and it's  
03:35:11 25 more of a process.



03:35:12 1 I apologize. I've never done this in 30 years --

03:35:15 2 THE COURT: Okay.

03:35:15 3 MR. JOHANNESSEN: -- I'm not talking about being  
03:35:17 4 in court. I'm talking about while you were talking, I turned  
03:35:19 5 my back and I don't do that. And I apologize for that. I  
03:35:23 6 really do sincerely. I turned my back to the Court.

03:35:26 7 THE COURT: Oh. No apologies sir --

03:35:26 8 MR. JOHANNESSEN: It's disrespectful. That's  
03:35:28 9 just what I'm -- that's -- I need to clear my head on that  
03:35:30 10 one.

03:35:30 11 THE COURT: Oh. No apology necessary. But,  
03:35:32 12 thank you very much for saying that, sir.

03:35:33 13 MR. JOHANNESSEN: Thank you.

03:35:33 14 THE COURT: I appreciate that.

03:35:34 15 Mr. Willis, is there anything from the defense  
03:35:36 16 before we get to logistical points that you want to make on  
03:35:39 17 the record at this point, or anything you need to clarify  
03:35:42 18 with me to where we're all on the same page before we go to  
03:35:45 19 the next part of this case?

03:35:47 20 MR. WILLIS: I don't believe so, Your Honor.

03:35:48 21 THE COURT: Okay. Thank you very much, sir.

03:35:52 22 I do want to thank everybody today. I know that  
03:35:54 23 this, like I said, has been very contentious and this is a  
03:35:57 24 very serious motion that I think is, you know, difficult for  
03:35:59 25 everybody in the room. And I appreciate your professionalism

03:36:02 1 and the preparation that anybody went into with today's  
03:36:05 2 hearing. Again, to the extent that I wasn't clear, that I  
03:36:07 3 haven't been clear, I apologize to everyone. You know, this  
03:36:10 4 is, I think my second month on the bench, so I'm still getting  
03:36:14 5 used to what I'm doing up here. So I apologize if I wasn't  
03:36:17 6 clear but, hopefully, we can move to the next part of this  
03:36:20 7 case and it will be more clear when we get here for the next  
03:36:23 8 hearing.

03:36:24 9 Mr. Willis, we indicated January. Do you have some  
03:36:26 10 dates in January that you're available?

03:36:29 11 MR. WILLIS: I do. And -- but before that, I,  
03:36:31 12 perhaps, answered your last question too quickly.

03:36:33 13 THE COURT: I apologize. Go ahead.

03:36:35 14 MR. WILLIS: There is one thing. And it's a  
03:36:36 15 delicate subject, but Your Honor has touched upon it several  
03:36:40 16 times; and that is, this is a very serious motion.

03:36:42 17 THE COURT: Uh-huh.

03:36:43 18 MR. WILLIS: This is quite unusual. And  
03:36:47 19 while we are all, I think, behaving professionally -- and I  
03:36:51 20 compliment my colleagues on the other side -- at the root  
03:36:54 21 of this is a very, um, emotional and painful series of  
03:37:01 22 allegations.

03:37:02 23 THE COURT: Uh-huh.

03:37:03 24 MR. WILLIS: My point of raising this is to  
03:37:05 25 say that the river flows both ways. And if the results of

03:37:09 1 this Motion For Sanctions are not in their favor -- and I  
03:37:13 2 highly suspect they won't be -- we may be back with you  
03:37:17 3 visiting the consequences of that decision.

03:37:22 4 THE COURT: And I should put on the record  
03:37:24 5 that if I do deny the motion, I will be entertaining a  
03:37:27 6 motion for attorneys fees from the prevailing party in terms  
03:37:35 7 of whether its plaintiff or defense. So, you might want to  
03:37:38 8 have everybody make sure that you have your statements and  
03:37:41 9 everything put together.

03:37:42 10 I will also state for the record that as it relates  
03:37:46 11 to Rule 11, certainly there are some concerns that I have  
03:37:49 12 with the filing of the Rule 11 aspect of this particular  
03:37:53 13 motion. And I do have a series of questions to ask about  
03:37:57 14 that. Um, I think it may make sense for me to ask some of  
03:38:04 15 those questions today as opposed to put things off, at least  
03:38:08 16 that way I can have that in my notes before we adjourn.

03:38:17 17 And you having brought that up, Mr. Willis, reminded  
03:38:20 18 me of that. And so let me do that. Let me move to that  
03:38:27 19 before we do logistics.

03:38:29 20 Mr. Pankopf, I just want to make sure I understand  
03:38:31 21 your motion and I want to understand the basis of the Rule 11  
03:38:35 22 aspects of the motion. And there's a few things in respect  
03:38:38 23 to that that I think I need some very serious clarification  
03:38:41 24 on. The first being the basis of the motion.

03:38:44 25 The Rule 11 aspect, as I understand it -- and I'm

03:38:47 1 just trying to understand it, sir -- is that the filing of  
03:38:50 2 the reply brief, at I believe docket number 123, that's the  
03:38:57 3 document that is claimed to have contained the materially  
03:39:02 4 false information.

03:39:03 5 Is that the basis, and that's the only basis, to  
03:39:06 6 which the Rule 11 aspect of the motion was filed?

03:39:09 7 MR. PANKOPF: That, and then the, uh, the  
03:39:13 8 e-mails that went back and forth in terms of trying to get  
03:39:20 9 a declaration from the defendants that that was, in fact, the  
03:39:27 10 original note and deed of trust that they presented at the  
03:39:33 11 June 8th hearing.

03:39:34 12 THE COURT: So I'm clear, you have two aspects  
03:39:38 13 of your Rule 11 -- the Rule 11 component of the motion. And  
03:39:43 14 the first being a reply brief that was filed in 2015 related  
03:39:48 15 to statements made that Wells Fargo was ready to provide the  
03:39:52 16 original documents, or the documents at that time and proceed  
03:39:55 17 with the settlement; and, e-mails that went back and forth  
03:40:02 18 between yourself and opposing counsel over a declaration?

03:40:05 19 MR. PANKOPF: Right.

03:40:06 20 THE COURT: So what would be the basis of that  
03:40:08 21 second part for Rule 11?

03:40:10 22 MR. PANKOPF: Well, that, that would -- just  
03:40:12 23 substantiated the, uh, the knowledge that the documents  
03:40:18 24 were -- the representation that was made in the prior  
03:40:22 25 document that they were not original notes and deeds of trust.

03:40:29 1 THE COURT: So Rule 11 is specific to  
03:40:31 2 representations made to the court.

03:40:32 3 MR. PANKOPF: Right.

03:40:33 4 THE COURT: Documents that are signed and filed  
03:40:35 5 with the court?

03:40:36 6 MR. PANKOPF: Right.

03:40:37 7 THE COURT: So, I'm going to ask again. What  
03:40:40 8 would the basis of a Rule 11 motion be for e-mails that go  
03:40:44 9 between counsel?

03:40:45 10 And I'm truly not trying to be --

03:40:48 11 MR. PANKOPF: Well, I guess, I'm --

03:40:49 12 THE COURT: I'm trying to understand how that  
03:40:51 13 could form the basis of the Rule 11 motion itself. And I  
03:40:54 14 don't recall that in your motion. So, if you can clarify that  
03:40:57 15 for me, sir.

03:40:58 16 MR. PANKOPF: Well, I guess in terms of -- I --  
03:41:02 17 what I would say, Your Honor, is that the e-mails do not  
03:41:07 18 form the basis of the Rule 11 motion. The formation of the  
03:41:11 19 Rule 11 motion is the statement in there regarding the, uh,  
03:41:14 20 the authenticity of the note and the deed of trust that was  
03:41:17 21 in that other document. But it was the, it was the e-mails  
03:41:22 22 that precipitated or, uh, came to the conclusion that they  
03:41:28 23 were unwilling to sign a declaration or affidavit that the  
03:41:31 24 documents that were presented, like I say, were, in fact, the  
03:41:34 25 originals that, you know, led to the conclusion that this

03:41:38 1 statement to the court and Slovak's counsel at the time was  
03:41:44 2 not truthful and meant to mislead.

03:41:51 3 THE COURT: One of the questions that I have  
03:41:53 4 is that one of the attorneys that you have personally named  
03:41:56 5 as someone that Rule 11 sanctions should be imposed against  
03:42:01 6 is Ms. Dove. And if you look at document 123, her name does  
03:42:05 7 not appear on that document, nor does her signature appear on  
03:42:08 8 that document.

03:42:09 9 MR. PANKOPF: I --

03:42:09 10 THE COURT: So how is it that she would be --

03:42:11 11 MR. PANKOPF: I don't --

03:42:11 12 THE COURT: -- someone that should be sanctioned  
03:42:14 13 under Rule 11, when she was not counsel, at least that I could  
03:42:17 14 tell, of record at that time?

03:42:19 15 MR. PANKOPF: I mean, I, I would have to review  
03:42:21 16 my motion again at this time, but I mean in terms of that  
03:42:24 17 document, I would agree with you that she's not counsel.  
03:42:28 18 And I thought I put on the motion that counsel that signed  
03:42:33 19 those pleadings --

03:42:33 20 THE COURT: Mr. Gordon and Ms. O'Mara --

03:42:36 21 MR. PANKOPF: -- at that time.

03:42:36 22 Right. Those two people --

03:42:37 23 THE COURT: -- Ms. Dove was not named in the  
03:42:39 24 caption.

03:42:39 25 MR. PANKOPF: That's right. Yes. And to my

03:42:41 1 recollection, I don't -- I didn't look at the motion -- or  
03:42:44 2 I haven't looked at the motion, but it would not have  
03:42:47 3 been the basis for the Rule 11 against Ms. Dove -- right.  
03:42:54 4 Ms. Dove. So, I agree with that. And I would have to go  
03:43:00 5 over that again.

03:43:00 6 But, again, my recollection was it was the other two  
03:43:03 7 counsel that were responsible for filing that pleading.

03:43:20 8 THE COURT: Counsel is listed in this motion,  
03:43:22 9 particularly with respect to the Rule 11 aspect, as  
03:43:26 10 counsel. And counsel is defined as Ms. Dove, Ms. O'Mara,  
03:43:30 11 and Mr. Gordon. So if, in fact, that document did not include  
03:43:35 12 Ms. Dove's name, and she was not the one that signed or  
03:43:38 13 otherwise was named on that document, do you continue to  
03:43:43 14 pursue Rule 11 sanctions against Ms. Dove based on the filing  
03:43:47 15 of that document?

03:43:47 16 MR. PANKOPF: No, I do not.

03:43:48 17 THE COURT: Okay. So to the extent that that  
03:43:50 18 motion is made as a Rule 11 motion against Ms. Dove for the  
03:43:54 19 filing of that document, it will be denied based upon the  
03:43:57 20 withdrawal of that aspect of the motion by Mr. Pankopf.

03:44:00 21 The second question I have relates more generally  
03:44:06 22 to the motions for Rule 11 sanctions; and that is, the  
03:44:10 23 document that was served, which was included at Exhibit F, I  
03:44:14 24 believe, of the defendant's response is very different than  
03:44:18 25 the motion that was filed. And the case law, as I understand

03:44:23 1 it, requires that the motions be identical, even if you're  
03:44:26 2 making alternative arguments.

03:44:28 3 So, what authority do you cite to that supports  
03:44:31 4 the notion that you complied with the safe harbor obligations  
03:44:36 5 under Rule 11 by serving a different motion on Wells Fargo and  
03:44:40 6 its counsel to that that was filed?

03:44:43 7 MR. PANKOPF: I think the Rule 11 motion is  
03:44:45 8 quite, uh, specific and you need only file the basis for the  
03:44:50 9 Rule 11 motion. You do not have to file the alternative  
03:44:56 10 reasons for the motions for sanctions, and that's what was  
03:45:01 11 provided and --

03:45:02 12 THE COURT: Do you have a case that you rely on  
03:45:05 13 for that position, sir?

03:45:06 14 MR. PANKOPF: Not as I stand here right now. I  
03:45:08 15 mean, I could brief it after that.

03:45:10 16 THE COURT: Let me make it clear to everybody  
03:45:12 17 in the room, no more briefing unless there's really a reason  
03:45:15 18 for it. But I will say this, I don't want briefing before the  
03:45:19 19 hearing, and I don't want any follow-up briefing after today.  
03:45:23 20 If there's any need for briefing I will ask for it as it  
03:45:26 21 relates specifically to the Motion For Sanctions and the  
03:45:29 22 mo -- I guess I'll -- the question of the originality and  
03:45:34 23 authenticity of the documents. If we need additional briefing  
03:45:37 24 after the next part of this hearing, then I will ask for  
03:45:40 25 it. But other than that, there should be no other filings,



03:45:43 1 specifically as to these things.

03:45:46 2 Sir, that is not my understanding of the case law,  
03:45:49 3 and that's not my understanding of the law as it relates to  
03:45:52 4 Rule 11. So what I will ask you to do -- and I will not  
03:45:56 5 rule on this right now -- but is to go back and do some  
03:45:59 6 research as it relates to Rule 11. And if there are cases  
03:46:03 7 that support your position, at the next hearing, I would ask  
03:46:06 8 for you to provide those. But if they are not available and  
03:46:10 9 the case law does not support your position, I will be asking  
03:46:13 10 you again at that time whether you are going to continue to  
03:46:16 11 proceed with the Rule 11 sanction motion against not only  
03:46:20 12 Wells Fargo, but Snell & Wilmer and, at this point, I believe  
03:46:23 13 we're down to Ms. O'Mara and Mr. Gordon. Because if you did  
03:46:27 14 not comply with the safe harbor obligations, I do not believe  
03:46:31 15 that that motion would be appropriate. But, I'll give you the  
03:46:33 16 opportunity to look for that case law and find that support  
03:46:36 17 for your position.

03:46:37 18 I think that that is the extent of the questions  
03:46:41 19 that I really had that were specific to the Rule 11 motion  
03:46:44 20 itself and that aspect of it. I guess, at this point, can  
03:46:49 21 we move to the question of scheduling and try to find dates  
03:46:55 22 that will work for everybody, including the witnesses. I do  
03:46:58 23 not believe that any other -- Dr. Kelley needs to be here for  
03:47:01 24 the next, but I do believe, Mr. Willis, there was a question  
03:47:04 25 about whether or not you wanted him to review the documents,

03:47:06 1 and I could ask that we deal with that as well when we deal  
03:47:09 2 with the scheduling question.

03:47:12 3 MR. WILLIS: Very well. In looking at my  
03:47:14 4 calendar, uh, the week of January 7th, 7, 8, 9, 10 or 11 --  
03:47:20 5 preferably 8, 9, 10 or 11, but I need to check with my expert.  
03:47:27 6 Okay. When are you --

03:47:28 7 MR. PANKOPF: I'm not going to be available then  
03:47:30 8 either. I'm going to be on vacation with my family.

03:47:33 9 THE COURT: Okay. Okay.

03:48:06 10 MR. WILLIS: January 30, 31, February 1,  
03:48:08 11 February 4 are all good, as are February 6, 7 and 8.

03:48:24 12 MR. JOHANNESSEN: Your Honor, February 7th, is  
03:48:25 13 that one of the alternatives?

03:48:27 14 MR. PANKOPF: 7 and 8.

03:48:30 15 MR. WILLIS: Or 6 and 7 -- or 7 and 8. Excuse  
03:48:34 16 me.

03:48:34 17 MR. JOHANNESSEN: What about 6 and 8?

03:48:36 18 MR. WILLIS: I don't think I can be --

03:48:38 19 MR. JOHANNESSEN: I'm sorry, Your Honor.

03:48:42 20 THE COURT: I appreciate the levity, sir.

03:48:49 21 MR. JOHANNESSEN: Either three, two of the  
03:48:51 22 three.

03:49:06 23 THE COURT: And that works for you, Mr. Pankopf?

03:49:08 24 MR. PANKOPF: Yes, Your Honor.

03:49:08 25 THE COURT: Okay. Thank you, sir.

03:49:10 1 THE CLERK: The 7th and 8th; February 7th at  
03:49:14 2 9:00 a.m. and February 8th at 9:00 a.m.

03:49:30 3 MR. WILLIS: Your Honor, with regard to the  
03:49:32 4 chain of custody witnesses --

03:49:34 5 THE COURT: Okay.

03:49:34 6 MR. WILLIS: -- are generally paralegals and  
03:49:36 7 lawyers in my law firm mainly based in Las Vegas, can they  
03:49:40 8 appear by Skype, or some other form of video conferencing?

03:49:47 9 THE COURT: Is there an objection to that from  
03:49:49 10 the plaintiff's counsel?

03:49:51 11 MR. JOHANNESSEN: Not at all.

03:49:52 12 THE COURT: I have no problem with that.

03:49:54 13 Um, I will have to say, though, I'm not sure I  
03:49:56 14 can rule on that from the bench. I need to find out if  
03:49:59 15 our court technology will support that in this particular  
03:50:02 16 courtroom.

03:50:04 17 THE CLERK: I don't think we can do Skype.

03:50:05 18 THE COURT: We can't do Skype.

03:50:08 19 THE CLERK: But, we might have something else  
03:50:09 20 that we can do.

03:50:09 21 THE COURT: We may be able to accommodate some  
03:50:12 22 other type of video conferencing or --

03:50:16 23 MR. WILLIS: We can probably even do FaceTime.  
03:50:18 24 I mean, it's -- if we have permission to do it, we'll figure  
03:50:21 25 out a way to get it done.

03:50:22 1 THE COURT: I think the question will be more a  
03:50:24 2 matter of the courtroom technology and whether or not we'll be  
03:50:27 3 able to -- unfortunately, these particular courtrooms are not  
03:50:30 4 sufficiently -- they're antiquated. Let me just put it that  
03:50:35 5 way. We don't have the same technology that they have in the  
03:50:37 6 district court courtrooms, so we're a bit limited.

03:50:39 7 I don't necessarily have a problem with an  
03:50:42 8 alternative way of testifying, but let me speak with  
03:50:45 9 my court staff. And then if I need to, we may have a  
03:50:48 10 teleconference over the phone where we can discuss how  
03:50:51 11 we work that out and make that happen so, that way, we can  
03:50:54 12 accommodate that. But, we'll do what we can to do that. I  
03:50:57 13 appreciate the expense that that is and the time that it  
03:51:00 14 takes away from people.

03:51:03 15 Is there -- now with respect to the documents, were  
03:51:06 16 you still going to request, or were you seeking to request  
03:51:09 17 that Dr. Kelley review these documents to determine if he  
03:51:12 18 can opine whether or not these are, in fact, the documents  
03:51:15 19 that he reviewed, or will you deal with that through the chain  
03:51:18 20 of custody witnesses?

03:51:20 21 MR. WILLIS: Well, uh, I would like that. I  
03:51:24 22 would like Dr. Kelley to take those documents back and look  
03:51:27 23 at them. And if he says they aren't, I would like him to be  
03:51:31 24 back at the hearing. And if he says they are, doesn't that  
03:51:35 25 eliminate the chain of custody issue?

03:51:41 1 THE COURT: Plaintiff's counsel.

03:51:42 2 MR. JOHANNESSEN: Your Honor, um, I think  
03:51:46 3 it's -- may I make a suggestion?

03:51:48 4 THE COURT: Please. That's why I'm asking.

03:51:50 5 MR. JOHANNESSEN: We have a -- if we have a  
03:51:51 6 hearing on the 6 and 7th?

03:51:54 7 THE COURT: Uh-huh. 7th and 8th.

03:51:54 8 MR. JOHANNESSEN: 7th and 8th.

03:51:57 9 MR. PANKOPF: 7th and 8th. Sorry. I would  
03:52:00 10 appreciate an order from the Court to tell the attorneys to  
03:52:03 11 get together on the Rule 11 aspect before then and see if  
03:52:06 12 there's a way to informally resolve that because in my --

03:52:09 13 THE COURT: Now, we're not talking about that  
03:52:11 14 issue right now, sir.

03:52:12 15 MR. PANKOPF: Oh, we're not.

03:52:13 16 THE COURT: And we can get to that.

03:52:14 17 The question is whether or not there would be a  
03:52:17 18 way for Dr. Kelley to review these documents, or -- and if  
03:52:21 19 he says these are -- or that he can state that these are the  
03:52:23 20 documents he reviewed, then does that -- and I think I -- I  
03:52:28 21 think the point is well taken, Mr. Willis, that that then  
03:52:31 22 eliminates the question of the chain of custody issue in terms  
03:52:34 23 of whether or not these were the documents he reviewed and  
03:52:37 24 that got to court, et cetera, versus if he says they're not,  
03:52:42 25 having him available again to testify at the next aspect of

03:52:46 1 the hearing.

03:52:48 2 Uh, I am a little bit concerned about releasing  
03:52:51 3 these documents to Dr. Kelley or anybody else, just because I  
03:52:55 4 don't want there to be any claim later, especially at the  
03:52:58 5 end of this, when these are supposed to be turned over to  
03:53:00 6 Mr. Slovak, if, in fact, they are the originals.

03:53:04 7 So is there a way to -- Dr. Kelley is in Marin area  
03:53:08 8 or --

03:53:10 9 DR. KELLEY: Yeah. San Francisco -- but  
03:53:12 10 San Jose.

03:53:12 11 THE COURT: San Jose?

03:53:14 12 THE WITNESS: Yeah. Southern peninsula. Right.

03:53:16 13 MR. WILLIS: Well, there's nothing, I would  
03:53:17 14 suppose, that would prevent him from flying to Reno and  
03:53:21 15 reviewing the documents in the courthouse, if there was a  
03:53:24 16 conference room. We could send over someone -- or if you'd  
03:53:28 17 release it to us to take across the street, we could do it in  
03:53:30 18 our office.

03:53:30 19 THE COURT: That was going to be my intention  
03:53:32 20 was actually to release them back to you --

03:53:34 21 MR. WILLIS: Okay.

03:53:34 22 THE COURT: -- to have them held by you to  
03:53:37 23 ensure that they are maintained. I feel a bit uncomfortable  
03:53:41 24 with the Court doing that.

03:53:42 25 MR. WILLIS: Okay.

03:53:43 1 THE COURT: So between the two sides, can you  
03:53:46 2 work out something where Dr. Kelley can review these documents  
03:53:49 3 again to make that determination?

03:53:52 4 MR. JOHANNESSEN: Yes.

03:53:54 5 THE COURT: Okay.

03:53:54 6 MR. JOHANNESSEN: I'm just not -- well, that --  
03:54:00 7 I love the practice of law. I just really don't like the  
03:54:04 8 business of it.

03:54:04 9 It's the cost involved. And it's -- I'll be blunt.  
03:54:12 10 My client, plaintiff, is not a two trillion dollar company,  
03:54:17 11 so this does cost something. So if there's a way we can do  
03:54:21 12 some type of a -- I don't know. That's just stream of  
03:54:24 13 consciousness, Your Honor.

03:54:25 14 THE COURT: Well, let me say this on the record.  
03:54:26 15 It's your motion, sir.

03:54:28 16 MR. JOHANNESSEN: Yes. I understand that. I  
03:54:29 17 understand that.

03:54:29 18 THE COURT: And so I'm not inclined to shift any  
03:54:31 19 burden or cost onto the defendant when it's your burden.

03:54:35 20 MR. JOHANNESSEN: Okay.

03:54:35 21 THE COURT: And in this instance, I think the  
03:54:37 22 questions were fair. The line of questioning was fair as it  
03:54:40 23 related to these documents. And Dr. Kelley was not able to  
03:54:44 24 testify as to whether these were the same documents that he  
03:54:47 25 reviewed or not. I don't think it's unfair or unreasonable

03:54:50 1 to request that he make that determination since he testified  
03:54:53 2 that he likely could. I understand the cost considerations,  
03:54:57 3 but I think that's a fair request by the defense given the --  
03:55:02 4 given what's at stake at this point.

03:55:05 5 MR. WILLIS: He could do it here. He could do  
03:55:07 6 it in Vegas again. We could make sure that the documents were  
03:55:10 7 there.

03:55:11 8 THE COURT: And I guess that's the question.  
03:55:13 9 What would be the least expensive and most economical?  
03:55:18 10 I would assume he can drive here from San Francisco as  
03:55:22 11 opposed to flying to Las Vegas, which would be less expensive,  
03:55:24 12 potentially, I guess, depending on the price of gas.

03:55:27 13 MR. JOHANNESSEN: There's a direct Southwest  
03:55:35 14 flight from Nashville to Las Vegas.

03:55:35 15 THE COURT: Not to Reno.

03:55:35 16 MR. JOHANNESSEN: Not to Reno.

03:55:43 17 THE COURT: Why don't we do this. I would ask  
03:55:47 18 that the two of you try to resolve this.

03:55:50 19 MR. JOHANNESSEN: Sure.

03:55:51 20 THE COURT: And if you're not able to resolve  
03:55:52 21 it by Friday, someone call my chambers and we'll get on the  
03:55:56 22 phone and we'll resolve it that way.

03:55:59 23 Dr. Kelley indicated that he would need a couple of  
03:56:02 24 hours, I think three hours, in total, to do a full  
03:56:06 25 examination, at least from what I understood --



03:56:08 1 DR. KELLEY: Yes.

03:56:08 2 THE COURT: -- I don't know that it would take  
03:56:10 3 that long for him to do what he's being asked to do here,  
03:56:13 4 which is simply to be able to verify that these are or are  
03:56:17 5 not what he believes to be the documents he reviewed in June.

03:56:22 6 I think the next question is a fair question from  
03:56:24 7 Mr. Willis then back to the plaintiff. If Dr. Kelley does  
03:56:27 8 state that these are the documents, or he believes them to  
03:56:29 9 be the same documents that he reviewed, would you still take  
03:56:33 10 the position that these are not authentic in terms of the  
03:56:37 11 documents that were examined by Dr. Kelley at that point?  
03:56:41 12 That's eliminating the need, or requiring the need for chain  
03:56:44 13 of custody witnesses from that point forward.

03:56:52 14 MR. JOHANNESSEN: Always think before you  
03:56:54 15 speak.

03:56:54 16 Um, I believe, Your Honor, there is a way the  
03:56:58 17 documents are authentic. I don't think there's a dispute  
03:57:04 18 as to authenticity here. I think there's a dispute as to  
03:57:06 19 originality -- which are two different things. A copy can  
03:57:09 20 be authentic, right?

03:57:11 21 THE COURT: As far as I understand under the  
03:57:12 22 best evidence rule.

03:57:12 23 MR. JOHANNESSEN: But, it doesn't mean that that  
03:57:15 24 copy is original. So, I'm not sure --

03:57:19 25 THE COURT: And I think that that's not my

03:57:20 1 understanding of what the position has been in the past. And  
03:57:24 2 so for what that's worth, uh, if we're not claiming that these  
03:57:30 3 are not authentic, but rather that they're just copies, then  
03:57:34 4 are you still objecting to the admission of these, as these  
03:57:37 5 being the documents that Dr. Kelley reviewed?

03:57:40 6 MR. JOHANNESSEN: I don't think I'm in a  
03:57:42 7 position to even answer that, Your Honor.

03:57:44 8 THE COURT: Okay.

03:57:45 9 MR. JOHANNESSEN: From what, from what I  
03:57:46 10 understand, what was examined on June 8th are copies, that --  
03:57:50 11 a copy that has been recorded, which is different.

03:57:53 12 MR. PANKOPF: I think what the Court is saying  
03:57:55 13 is that these are the documents he examined on June 6th -- or  
03:58:01 14 June 8th --

03:58:01 15 MR. JOHANNESSEN: One of those dates. I was --

03:58:02 16 THE COURT: Correct.

03:58:02 17 MR. PANKOPF: And so if he determines, yeah,  
03:58:05 18 these are them, then we don't -- then they don't need to prove  
03:58:08 19 that these were the documents that they brought. This is what  
03:58:11 20 he examined. They're not scanned, but they're the original,  
03:58:15 21 the actual originals, but they're just these documents that he  
03:58:18 22 examined, correct?

03:58:19 23 THE COURT: That's my understanding of what  
03:58:22 24 Mr. Willis' position was.

03:58:23 25 MR. PANKOPF: So -- and anyhow, what my -- with

03:58:25 1 that understanding, you know, I would agree with the Court  
03:58:29 2 that they wouldn't need to have a chain of custody as to those  
03:58:32 3 being the documents he examined. But, I still think we're  
03:58:36 4 still talking about the issue of the chain of custody from  
03:58:39 5 2002 to the present, correct?

03:58:42 6 THE COURT: Right. But, I still think that  
03:58:45 7 eliminates several witnesses potentially, or at least one  
03:58:47 8 witness, potentially, with respect to chain of custody, which  
03:58:50 9 may resolve the question of whether or not we need to have a  
03:58:52 10 teleconference or video conference testimony.

03:58:55 11 MR. PANKOPF: Right.

03:58:55 12 THE COURT: And it was plaintiff that objected  
03:58:56 13 to these particular documents as being the documents, or  
03:58:59 14 potentially being the documents, as I understood the  
03:59:02 15 objection --

03:59:02 16 MR. PANKOPF: Right.

03:59:02 17 THE COURT: -- by Mr. Pankopf, so I think  
03:59:04 18 that's why we're in this position in the first place. So --  
03:59:07 19 and I don't mean to say that you did anything incorrect by  
03:59:10 20 objecting, but that's why we have this issue now.

03:59:14 21 So, as I understand it, the plaintiff would agree  
03:59:19 22 that if Dr. Kelley reviews these and comes to the conclusion  
03:59:23 23 this these appear to be the same documents he reviewed, no,  
03:59:26 24 you would not need to bring a chain of custody witness from  
03:59:29 25 that point forward. If, in fact, he says that they are not,

03:59:33 1 then I agree with the defense then I would like Dr. Kelley to  
03:59:36 2 be here to testify to that, and to the reasons behind that, at  
03:59:40 3 the next hearing.

03:59:42 4 The question then becomes when can we have  
03:59:45 5 Dr. Kelley review these documents such that he can make  
03:59:48 6 that determination? I would like that to be done as soon as  
03:59:52 7 possible so that everybody can appropriately prepare for the  
03:59:54 8 next hearing. Um, I think we should schedule that now. We  
04:00:00 9 may as well take the time to do that so we don't have any  
04:00:04 10 argument over it later. Initially, I think I was thinking  
04:00:06 11 you guys could just talk and work that out amongst yourself.  
04:00:10 12 But since Dr. Kelley is here, I assume he has his calendar and  
04:00:14 13 you can work out a date that he could be here. We'll do it  
04:00:17 14 here in Reno. I will give them back to the attorneys for  
04:00:21 15 Snell & Wilmer, and they shall be here, and we'll work out who  
04:00:24 16 all needs to be in the room when that all happens.

04:00:27 17 I think the same process that you used in the first  
04:00:29 18 instance may be the same thing that you do this time around,  
04:00:32 19 is when he looked at them the first time. So, can we figure  
04:00:36 20 out a date now, between now and, say, the end of the year when  
04:00:39 21 Dr. Kelley could do that?

04:00:41 22 MR. PANKOPF: What do you got available?

04:00:43 23 DR. KELLEY: Uh, yeah, well, I got one  
04:00:44 24 commitment in Chicago in early December. So, yeah, sometime  
04:00:48 25 in December, maybe --

04:00:49 1 MR. PANKOPF: Take a look at your calendar and  
04:00:51 2 get us some dates.

04:00:53 3 THE WITNESS: Second half of December.

04:00:53 4 MR. PANKOPF: Second half of December?

04:00:55 5 THE WITNESS: Except for Christmas.

04:00:56 6 MR. PANKOPF: Christmas and New Year's.

04:00:58 7 THE WITNESS: Okay.

04:00:58 8 THE COURT: Do we have a specific date that we  
04:01:00 9 could narrow that down to?

04:01:08 10 MR. WILLIS: Did we pick a date? I'm sorry.

04:01:11 11 MR. PANKOPF: No. He was -- he said I'm  
04:01:12 12 allowing you to pick a date.

04:01:12 13 THE WITNESS: I'm allowing you to pick a date.

04:01:15 14 MR. PANKOPF: He said he had the second half of  
04:01:17 15 December, except for Christmas and New Year's, or New Year's  
04:01:17 16 Eve.

04:01:17 17 MR. WILLIS: Okay.

04:01:18 18 THE COURT: So this is a date that you all can  
04:01:21 19 pick, as long as it's in the second half of December and it's  
04:01:24 20 not on Christmas day?

04:01:25 21 THE WITNESS: Yeah. Probably would be a good  
04:01:28 22 idea --

04:01:29 23 THE COURT: I'll be working, but that's just me.

04:01:29 24 MR. WILLIS: How about the 18th?

04:01:31 25 THE WITNESS: Okay. Yeah, that's enough ahead

04:01:33 1 of time.

04:01:33 2 MR. PANKOPF: I'm available on the 18th.

04:01:36 3 THE COURT: Okay.

04:01:36 4 THE WITNESS: I'm a little worried about the  
04:01:39 5 flights back and forth and them crowding up.

04:01:40 6 THE COURT: I think what makes the most sense  
04:01:42 7 is that we just schedule that here at the courthouse. I'll be  
04:01:45 8 available if there's any issues that come up. And that way --  
04:01:47 9 and the attorneys, I'm assuming someone from the defense and  
04:01:48 10 someone from the plaintiff will be here, so if anything needs  
04:01:51 11 to be resolved at that point, if there's any problem, we can  
04:01:54 12 deal with that.

04:01:55 13 And maybe what we can do -- and Dr. Kelley, out of  
04:01:59 14 curiosity, at the end of that would, would you be able to  
04:02:02 15 state that day if these are the documents that you believed  
04:02:05 16 you reviewed; or, would you need time after that hearing or  
04:02:08 17 after that time frame?

04:02:09 18 THE WITNESS: I think probably I should take at  
04:02:12 19 least three days because sometimes the, you know, I don't  
04:02:16 20 recognize things immediately because --

04:02:17 21 THE COURT: Okay.

04:02:17 22 THE WITNESS: -- I'm looking at very fine  
04:02:19 23 detail.

04:02:20 24 THE COURT: Okay.

04:02:20 25 THE WITNESS: So, I don't like to push it too

04:02:23 1 much. I might make the wrong -- a wrong judgment.

04:02:26 2 THE COURT: Okay.

04:02:27 3 Then I would ask that within seven days of  
04:02:29 4 that review, that there be a filing that simply states  
04:02:36 5 Dr. Kelley --

04:02:37 6 THE WITNESS: Yes or no.

04:02:38 7 THE COURT: -- Dr. Kelley says yes or Dr. Kelley  
04:02:41 8 says no. And then, that way, we will know how we need to  
04:02:44 9 proceed at the hearing in February.

04:02:44 10 MR. WILLIS: And if he says no, can he have --  
04:02:47 11 be required to list his reasons?

04:02:48 12 THE WITNESS: Absolutely.

04:02:49 13 THE COURT: I think that's fair, at least a  
04:02:52 14 short summary report that identifies the reasoning behind  
04:02:53 15 that, similar to the one that he already did. It doesn't have  
04:02:56 16 to be extensive, but at least I think that's fair if he's  
04:02:59 17 going to come back to testify that these aren't the documents  
04:03:01 18 that he reviewed, at that point we can -- because that's a  
04:03:06 19 whole other issue then, I think, that we're going to have to  
04:03:09 20 deal with at that point.

04:03:10 21 MR. PANKOPF: Did we decide a time on the 18th?

04:03:13 22 THE COURT: Um, can we -- what would be the best  
04:03:15 23 room? Should we use my conference room where --

04:03:18 24 THE CLERK: Uh-huh.

04:03:18 25 THE COURT: Okay.

04:03:19 1 THE WITNESS: Yeah, it could be done in one of  
04:03:21 2 the conference rooms outside one of the courtrooms --

04:03:25 3 THE COURT: Okay.

04:03:25 4 THE WITNESS: -- or whatever.

04:03:25 5 THE COURT: I have a conference room back in my  
04:03:27 6 chambers. We can just do it there.

04:03:29 7 THE WITNESS: That's good.

04:03:29 8 THE CLERK: Nine o'clock?

04:03:29 9 THE COURT: Let's do nine o'clock in the morning  
04:03:33 10 on the 18th.

04:03:34 11 THE WITNESS: That's fine.

04:03:39 12 THE COURT: Is there any specific equipment or  
04:03:42 13 anything that we need to provide or make sure is available?

04:03:45 14 THE WITNESS: I'll bring everything that's  
04:03:47 15 needed.

04:03:48 16 THE COURT: Okay.

04:03:50 17 Okay. So we've schedule that. We've scheduled the  
04:03:52 18 hearing. Is there anything else that we need to address right  
04:03:56 19 now before we recess at this point?

04:03:58 20 MR. JOHANNESSEN: I believe one thing, Your  
04:03:58 21 Honor.

04:04:00 22 Throughout the course of the day, we've been  
04:04:02 23 getting, kind of, drips and drabs of defendant's expert  
04:04:07 24 analyses -- I mean, we haven't gotten that far yet, but is  
04:04:09 25 there an expect -- pardon me -- is there an expectation that



04:04:12 1 plaintiff receives some type of report from them?

04:04:15 2 MR. PANKOPF: Yeah.

04:04:16 3 MR. WILLIS: Yes.

04:04:16 4 MR. JOHANNESSEN: Okay. And --

04:04:16 5 THE COURT: Yes. I would ask that that be  
04:04:18 6 provided as soon as possible. And I think --

04:04:20 7 MR. WILLIS: I think we've said sometime before  
04:04:21 8 Christmas.

04:04:22 9 THE COURT: Okay.

04:04:23 10 So, we'll have that provided. Let's get an actual  
04:04:28 11 date just so we're all on the same page.

04:04:31 12 MR. WILLIS: The 21st? It's the Friday.

04:04:32 13 THE COURT: Yeah. Let's do it on the 21st.

04:04:37 14 MR. WILLIS: Ma'am, is that good?

04:04:39 15 UNIDENTIFIED SPEAKER: Yes. That's perfect.

04:04:40 16 THE COURT: And then the issue of meeting and  
04:04:42 17 conferring on the Rule 11. I believe that was another issue  
04:04:45 18 that you had, sir. Is that --

04:04:46 19 MR. JOHANNESSEN: Well, the reason I bring  
04:04:47 20 that up, Your Honor, it's -- I think it's probably stating  
04:04:49 21 the obvious, that a lot of cases, uh, once you get into  
04:04:52 22 the attorney stuff, uh, you know this back and forth with  
04:04:56 23 attorneys -- I'm not laying fault at anybody's feet right now  
04:05:00 24 -- but, it seems to get in the way of the resolution, the  
04:05:02 25 resolution everybody wants, which is between the clients.

04:05:06 1 So I thought, well, why don't we meet on the Rule 11. We're  
04:05:09 2 not going to take Wells Fargo out of the picture by no means,  
04:05:12 3 but at least take the -- what could possibly be an emotional  
04:05:17 4 component out of the case and put it at the feet of the  
04:05:20 5 clients.

04:05:21 6 THE COURT: Well, I believe that the Motion For  
04:05:23 7 Sanctions seeks sanctions against the attorneys at Snell &  
04:05:30 8 Wilmer not simply on the basis of Rule 11, but also on the  
04:05:35 9 basis of 18 U.S.C. Section 1927, as well as the inherent  
04:05:38 10 authority of the Court.

04:05:39 11 So I guess the question becomes is -- does the  
04:05:42 12 plaintiff, are you going to withdraw as it relates to Snell  
04:05:48 13 & Wilmer and the attorneys as to all three basis, and only  
04:05:50 14 proceed on sanctions as to Wells Fargo?

04:05:53 15 MR. JOHANNESSEN: No, not -- I'm not able to  
04:05:55 16 make that commitment right now. I hope you understand. I --

04:05:57 17 THE COURT: I do. I do. I'm just trying to  
04:06:00 18 understand. I just want you to be clear that the motion for  
04:06:02 19 sanctions is broader than Rule 11. It, actually, is on three  
04:06:06 20 separate basis. In fact, I do not believe that sanctions can  
04:06:11 21 be impose against a client -- and I'll need to go back and  
04:06:15 22 review this -- as to all three basis, I think it's specific to  
04:06:18 23 certain entities that can be sanctioned under certain rules  
04:06:22 24 and statutes.

04:06:23 25 MR. JOHANNESSEN: I agree.

04:06:24 1 THE COURT: Is there a time and date that you  
04:06:28 2 would like to meet and confer with the plaintiff and the  
04:06:31 3 defense counsel to discuss the scope of the motion going  
04:06:36 4 forward? Because I think that's what I had originally heard  
04:06:40 5 was that you wanted to discuss whether or not there should be  
04:06:42 6 a meet and confer.

04:06:44 7 MR. JOHANNESSEN: I don't see how communication  
04:06:45 8 cannot help, so.

04:06:49 9 THE COURT: Mr. Willis.

04:06:50 10 MR. WILLIS: We're always willing to talk,  
04:06:52 11 Your Honor.

04:06:53 12 THE COURT: Okay.

04:06:53 13 MR. PANKOPF: We're lawyers.

04:06:56 14 THE COURT: That's what we do, right?

04:06:57 15 MR. WILLIS: We might even listen too.

04:06:59 16 THE COURT: Now don't get crazy, sir.

04:07:03 17 I will leave that to the parties. You know, like  
04:07:06 18 you said, this -- and I think Mr. Willis pointed it out. I  
04:07:11 19 know I've pointed it out. It becomes much more emotional when  
04:07:14 20 people are being individually attacked, in effect. So, I'll  
04:07:17 21 leave it to the parties to work out a meet and confer. And  
04:07:20 22 if there is some agreement as to limiting the scope of the  
04:07:25 23 sanction motion as to who it's going to be sought against, we  
04:07:29 24 can address that on the record first thing in February. We  
04:07:32 25 can put that on the record and we can go forward on that

04:07:36 1 basis. I think that would make the most sense, that will  
04:07:39 2 give you plenty of time to discuss it, maybe work that out  
04:07:42 3 amongst yourselves.

04:07:44 4 I would say this though. If there is an inclination  
04:07:46 5 to withdraw this motion as it relates to individual attorneys  
04:07:49 6 and to Snell & Wilmer, I would seriously encourage everybody  
04:07:53 7 to do that, regardless of what the Court may or may not do. I  
04:07:57 8 think it is a very, very serious allegation to make against  
04:08:01 9 attorneys. And I can say, from what I've read, I do not  
04:08:05 10 see any evidence to support the idea that those individual  
04:08:09 11 attorneys, or Snell & Wilmer, even if these documents are not  
04:08:13 12 what they are purported to be, that they knew that, or had any  
04:08:17 13 reason to question that. And I think that is where the crux  
04:08:21 14 of the problem comes in when you file a motion for sanctions  
04:08:24 15 against attorneys and law firms, because unless you have some  
04:08:27 16 very clear evidence that they did something on purpose, and  
04:08:30 17 they knew what they were doing was wrong, you're going down a  
04:08:34 18 very, very slippery slope.

04:08:38 19 And I will say, preliminarily, I do not see any  
04:08:41 20 evidence in this motion, and I have not heard any evidence  
04:08:44 21 here today, that would support the notion that Ms. O'Mara or  
04:08:48 22 Mr. Gordon, or Snell & Wilmer as a firm, knew that they were  
04:08:52 23 providing something that was false, or that they intended to  
04:08:56 24 make material misrepresentations to this court when it filed  
04:09:00 25 -- or when they filed the document 123, or even in the

04:09:06 1 subsequent representations that were made to the Court.

04:09:08 2 That's my preliminary statement as to that. I'm  
04:09:12 3 not going to rule on the overarching question of whether or  
04:09:16 4 not the document really was what it was purported to be or  
04:09:19 5 not. That's a question as to the client and what they may  
04:09:21 6 have known or didn't know. But as it relates to the attorneys  
04:09:25 7 and the law firm, I have not seen any evidence that supports  
04:09:28 8 that at this point.

04:09:30 9 Now, we're having a continuation of the hearing, so  
04:09:32 10 I'm not going to make any ruling on that. But as we sit here  
04:09:36 11 today, I don't see that necessarily. So I would encourage  
04:09:41 12 you, if you're inclined to do that, to do that sooner rather  
04:09:44 13 than later.

04:09:44 14 Is there anything else, sir, or Mr. Pankopf?

04:09:47 15 MR. PANKOPF: No, Your Honor.

04:09:47 16 THE COURT: Thank you very much both of you.

04:09:49 17 Mr. Willis or Ms. Dove, is there anything else from  
04:09:51 18 you?

04:09:53 19 MS. DOVE: Not from me, Your Honor.

04:09:53 20 MR. WILLIS: I don't believe so. Thank you.

04:09:55 21 THE COURT: Okay. Thank you again for your  
04:09:57 22 professionalism and for your preparation. I look forward to  
04:09:59 23 seeing everybody again in February. As I already indicated, I  
04:10:04 24 do not see why anything would need to be filed or any issues  
04:10:07 25 would have to come up between the parties. But, if there is

04:10:10 1 any issue that you feel that you need to bring to the Court's  
04:10:12 2 attention, that you cannot work out amongst yourselves, to be  
04:10:16 3 clear on the record, file a document. If one gets filed, that  
04:10:20 4 is a joint document, that lists in one or two paragraphs each  
04:10:24 5 parties' position, and file it with me. And if I can't decide  
04:10:28 6 it on the documents that are provided -- or that document,  
04:10:31 7 then I will just have a quick teleconference, like I had last  
04:10:34 8 time, so we can resolve it as quickly as possible so we don't  
04:10:37 9 have outstanding issues. I don't want to have the hearing  
04:10:41 10 pushed back or delayed or anything because of any kind of  
04:10:44 11 conflicts between the parties. I don't see why any should  
04:10:47 12 occur. But for whatever it's worth, if there is any need for  
04:10:51 13 that, that's what we will do.

04:10:53 14 I would also order that the plaintiff actually order  
04:10:55 15 the transcript in this particular case to make sure that the  
04:10:59 16 transcript gets transcribed for everyone for purposes of this  
04:11:02 17 particular hearing.

04:11:03 18 I also indicated that I will be giving back the  
04:11:06 19 documents that are marked at 3, 4 and 5A, back to defense  
04:11:10 20 counsel, Mr. Willis --

04:11:12 21 MR. WILLIS: May I approach?

04:11:14 22 THE COURT: -- to retain.

04:11:16 23 Yes. Please, sir.

04:11:17 24 Um, and these are the documents that the Court will  
04:11:18 25 order that be brought to the court on December 18th, so that

04:11:21 1 there's no question that those are the documents that are  
04:11:24 2 being returned, and that then show back up here on the 18th.  
04:11:27 3 That's an order of the Court.

04:11:29 4 Unless there's anything further -- anything further  
04:11:31 5 from the plaintiff at this point?

04:11:32 6 MR. JOHANNESSEN: Thank you for your patience,  
04:11:34 7 Your Honor.

04:11:34 8 THE COURT: Thank you very much.  
04:11:35 9 Anything from the defense?

04:11:36 10 MR. WILLIS: No, Your Honor. Thank you.

04:11:37 11 THE COURT: Thank you very much.

04:11:39 12 And we will be in recess. We will see you in  
04:11:43 13 February.

04:11:44 14 MR. PANKOPF: Thank you.  
15 (Court Adjourned.)

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I certify that the foregoing is a correct  
transcript from the record of proceedings  
in the above-entitled matter.

\s\ Kathryn M. French

December 29, 2018

KATHRYN M. FRENCH, RPR, CCR  
Official Reporter

DATE

04:11:45  
04:11:45



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**I N D E X   O F   E X H I B I T S**

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